A Twelve-Part Treatise

Commentary on the Legal System of Bangladesh

Bar Council and Necessary Reforms

S M Nazmuz Sakib

Commentary on the Legal System of Bangladesh, Bar Council, and Necessary Reforms

S M Nazmuz Sakib

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Commentary on the Legal System of Bangladesh, Bar Council, and Necessary Reforms
A Twelve-Part Treatise

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Preface

This work was not conceived in the quiet of a library carrel, nor was it born from the detached curiosity of a scholar who has found a comfortable distance from his subject. It emerged from a frustration that is both deeply personal and profoundly institutional, a frustration that has refused to settle into mere academic complaint. The ordinary frustration of a law student who cannot find a good reference book is real enough, and it is a frustration that this work hopes to alleviate. But the frustration that animates these pages is of a different order altogether. It is the more serious, more consequential frustration that arises when one confronts a fundamental and uncomfortable truth about the institutions that shape the life of a nation. The truth is this. The legal system of Bangladesh, the framework of courts and codes that should serve as the bedrock of justice, and the Bangladesh Bar Council, the body that should stand as the guardian of professional integrity, are largely operating on inherited assumptions that have never been seriously examined. They are built on structures that were designed for a colonial context that has long since dissolved. Their intellectual foundations have not been meaningfully updated in generations. The lawyers who practice, the judges who preside, and the law students who enter this system are working with tools that were forged for a different country, a different society, and a different set of problems.

This commentary addresses both the heritage and the urgent need for its transformation. Bangladesh possesses a legal heritage that is genuinely rich, complex, and in many ways admirable. It draws from the deep wells of Islamic jurisprudence, with its sophisticated methodologies of analogical reasoning, consensus, and the higher purposes of law known as the maqasid al sharia. It draws from the equally sophisticated tradition of Hindu legal thought, the Dharmashastra and the distinctive Dayabhaga school that developed in Bengal, governing inheritance and family relations for centuries. It draws from the procedural architecture of the English common law, the adversarial system, the doctrine of precedent, and the principles of natural justice. And it draws from the constitutional aspirations of a nation born from a war of liberation, a constitution that promises equality, human dignity, and social justice. This is not a simple inheritance. It is a layered, contested, and intellectually vibrant inheritance. But it is also a system in profound crisis. The legal education that produces the country's lawyers is failing to equip them for the demands of modern practice. The Bar Council's system for admitting new advocates is mired in allegations of corruption, inefficiency, and an outdated emphasis on rote memorization of statutory sections. The courts are buried under approximately 4.5 million pending cases, a backlog that represents a denial of justice on a massive and morally troubling scale. The gap between the law as it is written and the law as it is experienced by ordinary citizens has become a chasm that undermines the very legitimacy of the state.

The pages that follow are not a neutral description. They are a commentary, and commentary in the great jurisprudential tradition is a form of argument. The masterworks of legal history, from Blackstone's Commentaries on the Laws of England to Savigny's System of the Modern Roman Law, from Coke's Institutes to the magnificent tradition of Mughal legal scholarship represented by the Fatawa e Alamgiri, have never been mere transcriptions. They have been acts of engagement, arguments for understanding law in a particular way, for reading its history in a particular light, and for recognizing its future in a particular direction. This work aspires, with appropriate humility, to that tradition. It argues that the legal system of Bangladesh is not merely

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inefficient. It is misaligned with its own stated purposes. It argues that the Bar Council is not merely slow. It is structurally compromised by political capture, by a governance system that rewards loyalty over competence, and by a regulatory culture that has failed to enforce professional standards for decades. It argues that legal education is not merely outdated. It is actively producing graduates who are unprepared for the profession they seek to join, trained in the black letter law of memorization rather than the analytical and practical skills that genuine legal competence requires.

This is the first part of a twelve part work, and it is the longest and in some ways the most demanding. The reason for this is simple and should be stated plainly. The arguments for reform cannot be properly understood without first understanding the depth and complexity of what is being reformed. A surgeon who does not understand anatomy cannot operate well. A reformer who does not understand the deep structure of the institution being reformed cannot reform well. This part is the anatomy lesson that must precede the operation. It traces the civilizational roots of legal thought in the Bengal delta, from the ancient pluralism of Hindu and Islamic legal traditions through the Mughal period and the colonial transformation initiated by the East India Company and the British Crown. It examines the jurisprudence of the Liberation War of 1971, not merely as a political event but as a profound legal and constitutional event that raised fundamental questions about self determination, state succession, and the laws of armed conflict. It analyzes the philosophical architecture of the 1972 Constitution, its four foundational principles of nationalism, socialism, democracy, and secularism, and the subsequent constitutional battles that have reshaped and contested those principles over five decades. It dissects the colonial legal codes that still govern daily life in Bangladesh, the Penal Code of 1860, the Evidence Act of 1872, the Contract Act of 1872, the Transfer of Property Act of 1882, and the Codes of Civil and Criminal Procedure. These are not historical relics. They are living law, applied in courtrooms every day, and they carry with them the assumptions, limitations, and biases of their Victorian origins.

The reader should expect this text to be challenging. The difficulty is not a deliberate obscurity, nor is it an affectation of scholarly depth. It is a necessary consequence of the subject matter. Law in Bangladesh sits at the intersection of multiple, sometimes conflicting intellectual traditions. To understand Islamic jurisprudence adequately requires engaging with the Quran, the Sunnah, the principles of ijma and qiyas, and the elaborate hermeneutical traditions of the four major Sunni schools. To understand Hindu legal thought requires engaging with the Dharmashastra texts, the commentaries of Jimutavahana, and the distinctive inheritance rules of the Dayabhaga school. To understand the common law tradition requires engaging with the doctrine of precedent, the distinction between ratio decidendi and obiter dicta, and the principles of statutory interpretation that have evolved over centuries. And to understand the constitutional law of Bangladesh requires engaging with the text of the 1972 Constitution, the amendments that have fundamentally altered its character, and the jurisprudence of the Supreme Court on fundamental rights, the basic structure doctrine, and the limits of amending power. Understanding any one of these traditions adequately requires sustained intellectual effort. Understanding how they interact, how they conflict, how they have been layered one upon another over centuries to produce the present legal system, requires even more. But the effort is worth making. Bangladesh stands at a pivotal moment in its history. The political transformation of 2024 and 2025, the student led Monsoon Revolution that brought down the government of

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Sheikh Hasina after more than fifteen years of increasingly authoritarian rule, has opened a rare and precious window for institutional reform. The country is actively debating the shape of its future constitution, the structure of its judiciary, the standards of its legal profession, and the content of its legal education. This is not an academic exercise. It is a live, urgent, and consequential national conversation. This book is a contribution to that conversation, offered with the conviction that rigorous analysis, grounded in history and jurisprudence, can inform and strengthen the choices that Bangladesh's citizens and leaders must make.

The analysis that follows is grounded in several convictions that should be stated explicitly. The first conviction is that reform must be comprehensive and systemic, not piecemeal and fragmentary. The problems of the legal system are deeply interconnected. The inadequate quality of legal education feeds into the inadequate quality of the bar, which feeds into the inadequate quality of legal services, which feeds into the inadequate functioning of the courts, which feeds into the poor outcomes of the justice system. Addressing any one of these problems in isolation will produce limited results. A comprehensive approach that addresses all of them together, in a coordinated and mutually reinforcing way, is needed. The second conviction is that reform must be guided by a clear sense of purpose. The fundamental purpose of the legal system is to serve justice, to protect the rights of citizens, to regulate the relationships among members of society in a fair and predictable way, and to provide mechanisms for the peaceful resolution of disputes. Every reform proposal must be evaluated against this fundamental purpose. Does it make the legal system more effective at serving justice, protecting rights, and resolving disputes? If it does, it deserves support. If it does not, it should be rejected regardless of the interests it serves. The third conviction is that reform must be inclusive and participatory. The process of developing reform proposals must involve all the stakeholders in the legal system. Students, junior advocates, senior practitioners, judges, clients, academics, civil society organizations, and the general public. This is not merely a procedural nicety. It is essential for producing reform proposals that are well informed, practically feasible, and sufficiently widely supported to be effectively implemented.

The fourth conviction, and perhaps the most important, is that reform must be informed by comparative experience without being slavishly imitative of foreign models. Bangladesh can and should learn from the experience of other common law jurisdictions in reforming their legal education systems, their professional regulatory frameworks, and their court structures. The English reforms under the Legal Services Act 2007, the Indian experience with the National Law Schools and the Common Law Admission Test, the Australian specialist accreditation programs, and the South African constitutional transformation all offer valuable lessons. But the solutions appropriate for England, India, Australia, or South Africa are not necessarily appropriate for Bangladesh. The specific conditions of Bangladesh, its legal heritage, its social context, its economic development level, and its political culture, all require that imported models be adapted to local conditions rather than transplanted wholesale. This commentary attempts that adaptation seriously, drawing on global best practices while rooting the analysis in the specific realities of Bangladesh.

The scope of this work is ambitious, and it is appropriate to be clear about what it covers. The twelve parts address, in sequence, the civilizational and jurisprudential foundations of law in Bengal, the colonial legal revolution and its consequences, the constitutional and philosophical

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architecture of the Bangladeshi state, the structure of the court system and the crisis of judicial delay, the history and current state of the Bangladesh Bar Council, the controversies surrounding the enrollment examination and the case for its fundamental reform, the comprehensive failures of legal education and the architecture of a reformed curriculum, the development of clinical legal education as a tool for access to justice, the establishment of a specialist accreditation framework for the legal profession, the professional doctoral program and the development of legal scholarship, the reform of personal law and the tension between religious identity and constitutional equality, the challenges of transitional justice in the wake of the 1971 Liberation War and the 2024 Monsoon Revolution, and finally Bangladesh's place in the global legal order, including international investment law, the climate crisis, and the artificial intelligence revolution in legal practice. Each of these topics is examined in detail, with sustained attention to both the diagnostic question of what is wrong and the prescriptive question of what should be done.

The timing of this work is not accidental. The political and legal transformations of 2024, 2025, and early 2026 have created conditions for reform that are more propitious than any Bangladesh has experienced since the founding of the republic in 1971. The interim government led by Professor Muhammad Yunus established eleven reform commissions covering virtually every major area of governance, including the judiciary. The Judiciary Reform Commission, headed by former Appellate Division Justice Shah Abu Nayeem Mominur Rahman, submitted its comprehensive 380 page report in February 2025. The July National Charter, signed by twenty five political parties in October 2025, embedded eighty four reform recommendations into a framework that received a sixty eight percent endorsement in the national referendum held simultaneously with the general election of February 12, 2026. The International Crimes Tribunal, reconstituted in October 2024, has convicted a former Prime Minister in absentia and sentenced her to death, generating international controversy about fair trial standards and the risk of political instrumentalisation. A new Bangladesh Bar Council election has been announced for May 19, 2026, the first since the political transformation of August 2024. These are not routine developments. They represent a window of genuine reform opportunity that, if missed, may not open again for a generation. This commentary is written in the conviction that scholarship has a responsibility to engage with such moments, to provide the intellectual resources that reformers need, and to hold power accountable to the principles that a just legal system requires.

The work is long, and it demands much of its reader. But the subject demands no less. Bangladesh is a country of more than 170 million people, a vibrant democracy with a complex history, a rich culture, and immense potential. Its legal system is one of the most important public institutions in the life of the nation, shaping the distribution of land, the enforcement of contracts, the protection of rights, the resolution of family disputes, and the accountability of state power. The quality of that legal system determines, in very concrete ways, the quality of life of every citizen. A legal system that is slow, expensive, corrupt, and inaccessible is not merely an administrative failure. It is an injustice. Bangladesh deserves better. This commentary is offered as a contribution to the project of building that better system, one that the citizens of Bangladesh can be proud of, that its professionals can operate with competence and integrity, and that its students can enter with genuine enthusiasm and adequate preparation. That system is possible. This work is one step toward making it real.

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PART ONE: FOUNDATIONS, HISTORY, JURISPRUDENCE, AND THE PHILOSOPHICAL ARCHITECTURE OF LAW IN BANGLADESH

PREFACE TO PART ONE

This textbook was conceived out of a deep and persistent frustration. Not the ordinary frustration of a student who cannot find a good reference book, but the more serious, more consequential frustration that arises when one realizes that one of the most important institutions in the life of a nation, the institution of law and its professional practitioners, is operating on inherited assumptions that have never been seriously examined, on structures that were designed for a colonial context long since dissolved, and on intellectual foundations that have not been updated in generations. Bangladesh possesses a rich, complex, and in many ways deeply admirable legal heritage. It also possesses a legal education system, a bar council, a system of professional entry, and a culture of legal practice that are badly in need of comprehensive reform. This textbook addresses both the heritage and the need for transformation.

The pages that follow are not a neutral description. They are a commentary, and commentary, properly understood in the jurisprudential tradition, is a form of argument. The great commentaries of legal history, from Blackstone's Commentaries on the Laws of England to Savigny's System of the Modern Roman Law, from Coke's Institutes to the magnificent tradition of Mughal legal scholarship, have all been documents of engagement rather than mere transcription. They have argued for understanding law in a particular way, for reading its history in a particular light, and for recognizing its future in a particular direction. This work aspires, with appropriate humility, to that tradition.

Part One of this twelve-part textbook covers the philosophical, historical, and jurisprudential foundations upon which everything else in this series will rest. It is the longest and in some ways the most demanding part, because the arguments it makes about reform cannot be properly understood without first understanding the depth and complexity of what is being reformed. A surgeon who does not understand anatomy cannot operate well. A reformer who does not understand the deep structure of the institution being reformed cannot reform well. This part is the anatomy lesson that must precede the operation.

The reader should expect this text to be challenging, not because it is deliberately obscure, but because the subject matter genuinely demands serious intellectual engagement. Law in Bangladesh sits at the intersection of Islamic jurisprudence, Hindu legal philosophy, English common law, colonial administrative practice, nationalist constitutional theory, and contemporary global legal thought. Understanding any one of these traditions adequately requires sustained intellectual effort. Understanding how they interact, how they conflict, how they have been layered one upon another over centuries to produce the present legal system, requires even more. But the effort is worth making. Bangladesh deserves a legal system that its citizens can be proud of, that its professionals can operate with competence and integrity, and

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that its students can enter with genuine enthusiasm and adequate preparation. That system is possible. This textbook is one contribution to making it real.

CHAPTER ONE: THE CIVILIZATIONAL ROOTS OF LEGAL THOUGHT IN THE BENGAL DELTA

Section 1.1: Before the Colonial Era - The Pluralistic Legal Universe of Bengal

To understand the legal system of Bangladesh is to understand a history of legal pluralism so profound and so ancient that it defies any simple account. The territory that is now Bangladesh has been, over the course of its recorded history, a site of encounter between some of the most sophisticated legal and philosophical traditions that human civilization has produced. Before the British arrived, before the Mughals, before the Sultanate of Bengal, before any of the political formations that come readily to mind when we think of the history of this region, there was already an elaborate tradition of normative ordering in the delta of the Ganges and the Brahmaputra.

The jurisprudential question that must be asked at the very beginning is deceptively simple but philosophically profound: what is law? This is not a rhetorical question. It is the organizing question of the entire study of jurisprudence, and it has been answered in radically different ways by different traditions. The answer one gives to this question determines everything else about how one understands a legal system, evaluates its quality, and designs its reforms. It is therefore not an indulgence to begin a textbook about the Bangladesh Bar Council and legal education reform with a philosophical inquiry into the nature of law itself. It is a necessity.

In the Western philosophical tradition, at least since the Greeks, law has been understood through several competing frameworks. For Aristotle, law was the expression of reason ordering the community toward the good life. For the Stoics, it was the manifestation of a universal rational order accessible to all human beings through reason alone. For the Roman jurists, particularly Ulpian and Gaius, it was divided into the ius naturale, the ius gentium, and the ius civile, a tripartite structure that would profoundly influence all subsequent Western legal thought. Each of these frameworks carried different implications for the relationship between positive law, enacted by human authorities, and natural law, grounded in reason or nature or divine will.

The Hindu philosophical tradition, which was deeply embedded in Bengali culture long before the Common Era and remained powerfully present throughout the medieval and early modern periods, had its own sophisticated jurisprudence. The concept of dharma, which inadequately translates as "law" or "duty" or "righteousness," was the central organizing concept of Hindu social and normative theory. Dharma was at once cosmic order, moral obligation, social duty, and legal right. It was simultaneously descriptive and prescriptive, characterizing both how the universe was organized and how human beings were obligated to act within it. The concept of dharma encompassed what we would today recognize as constitutional law, in the sense of the

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fundamental ordering of society, as well as criminal law, property law, family law, and professional ethics.

The Dharmashastra tradition, which produced texts like Manu's Manusmriti, Yajnavalkya's Yajnavalkyasmriti, and the later Mitakshara and Dayabhaga schools of commentary and interpretation, constituted a sophisticated legal literature that governed much of the normative life of Hindu populations across the Indian subcontinent, including Bengal, for many centuries. The Dayabhaga school in particular, associated with the eleventh-century jurist Jimutavahana, was developed in Bengal and governed the distinctive inheritance practices of Bengali Hindus. It differed significantly from the Mitakshara school that prevailed in most of the rest of India, particularly in its treatment of joint family property and the rights of widows. This divergence is not a trivial fact for legal historians; it illustrates that even within what might appear to be a single tradition, there was significant intellectual debate, regional variation, and jurisprudential creativity.

What is particularly striking about the Dharmashastra tradition from a jurisprudential perspective is its sophisticated treatment of the relationship between text and interpretation. The Dharmashastra jurists were keenly aware that ancient texts could not be applied mechanically to new situations without interpretive mediation. They developed elaborate hermeneutical principles for reconciling conflicting texts, for identifying the underlying purpose behind specific rules, and for extending rules by analogy to situations not explicitly covered. This was not fundamentally different from the methodology of common law reasoning from precedent, though it arose independently and in a very different cultural context. The parallel is instructive: good legal reasoning, whatever the tradition, requires the ability to move from general principles to specific cases, to distinguish cases that superficially appear similar but differ in legally relevant ways, and to identify the purpose behind a rule in order to apply it sensibly to new situations.

Section 1.2: The Islamic Legal Tradition and Its Presence in Bengal

The arrival of Islam in Bengal, which began in earnest with the conquest of Muhammad bin Bakhtiyar Khilji at the very end of the twelfth century, introduced a new and extraordinarily sophisticated jurisprudential tradition into the legal landscape of the region. The Islamic legal tradition, embodied in the Sharia and elaborated through the science of fiqh (jurisprudence), was one of the most intellectually impressive legal systems that human civilization had ever produced. Its methodology, its substantive content, and its philosophical underpinnings were all remarkable, and its presence in Bengal would shape the legal culture of the region for centuries.

The sources of Islamic law, as elaborated by the classical jurists of the four major Sunni schools (the Hanafi, Maliki, Shafi'i, and Hanbali madhhabs), were the Quran, the Sunnah (the practice of the Prophet as recorded in the hadith literature), ijma (consensus), and qiyas (analogical reasoning). The Hanafi school, founded by the great eighth-century jurist Abu Hanifa al-Nu'man, became dominant in South Asia, largely because of its adoption by the Mughal state, and it was the Hanafi tradition that was most influential in Bengal throughout the Sultanate and Mughal periods.

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The jurisprudential methodology of the classical Islamic scholars was sophisticated in ways that are often underappreciated by Western legal scholars. The development of usul al-fiqh, the principles of jurisprudence that governed the derivation of specific rules from the foundational sources, represented a major intellectual achievement. The classical jurists developed theories of interpretation, theories of the purposes of law (the maqasid al-sharia, associated particularly with the great scholar al-Ghazali and later elaborated by al-Shatibi), theories of the relationship between public and private interest, and theories of how law should respond to changed circumstances. The concept of ijtihad, independent juristic reasoning, and the ongoing debate about its scope and limits, represented a sophisticated engagement with the problem of legal change and adaptation that has no simple parallel in Western legal thought of the same period.

The maqasid al-sharia, the higher purposes of Islamic law, deserves particular attention because of its relevance to contemporary discussions of legal reform in Muslim-majority countries including Bangladesh. Al-Shatibi, the fourteenth-century Andalusian scholar, identified five fundamental purposes that Islamic law was designed to serve: the protection of religion, the protection of life, the protection of intellect, the protection of lineage, and the protection of property. Later scholars added to this list and refined it in various ways. What is philosophically significant about this framework is that it grounds Islamic law not merely in the authority of divine command but in the substantive goods that the law is designed to serve. This opens the door, in principle, to a purposive interpretation of legal rules that can accommodate changing circumstances without abandoning the fundamental commitment to divine guidance.

In Bengal under the Sultanate and later the Mughals, Islamic law operated as the law of the state in matters of public concern, including criminal law, taxation, and the regulation of trade and commerce. In matters of personal status, family law, and inheritance, Islamic law governed the Muslim population while the Dharmashastra tradition continued to govern the Hindu population. This plural legal arrangement, whereby different legal systems applied to different population groups, was not unique to Bengal; it was characteristic of most pre-colonial empires that governed religiously diverse populations. What it meant in practice was that the people of Bengal lived within a genuinely plural legal universe, where different legal traditions operated side by side and where the courts and administrators of the state had to navigate between them.

The Mughal emperor Aurangzeb's commission of the Fatawa-e-Alamgiri, a comprehensive compilation of Hanafi jurisprudence completed in 1672, represents one of the most ambitious projects of legal codification in pre-modern history. The Fatawa-e-Alamgiri was produced by a committee of the most distinguished Hanafi jurists of the empire and covered virtually every area of law from constitutional matters to commercial transactions, family law, criminal law, and the law of evidence. It was a reference work of enormous sophistication and was used by Mughal courts throughout the empire, including in Bengal. Its influence on subsequent legal development in South Asia, even after the advent of British rule, was substantial.

Section 1.3: The Philosophical Significance of Legal Pluralism

The pre-colonial legal landscape of Bengal was thus one of genuine and deep legal pluralism. Multiple legal traditions coexisted, each with its own texts, its own courts or dispute-resolution mechanisms, its own professional cadre of interpreters and practitioners, and its own

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understanding of the ultimate grounds of legal authority. This pluralism raises profound philosophical questions that are directly relevant to the contemporary legal system of Bangladesh.

The first and most fundamental question is whether legal pluralism is a problem to be overcome or a feature to be recognized and accommodated. The dominant tendency in modern Western legal thought, rooted in the positivist tradition associated with John Austin and H.L.A. Hart, has been to treat a unified sovereign legal system as the norm and pluralism as an anomaly or a failure of state formation. On this view, developed from Austin's concept of law as the command of a sovereign and Hart's concept of a legal system as a set of rules united by a rule of recognition, there can properly be only one legal system in a given territory, and competing normative orders are either incorporated into that system or they are not law at all.

This positivist monism has been challenged from many directions in recent decades, and its challenge is particularly acute in postcolonial contexts. Legal pluralists like Sally Falk Moore, who developed the concept of the "semi-autonomous social field," John Griffiths, who famously distinguished "weak" from "strong" pluralism, and Boaventura de Sousa Santos, whose concept of "interlegality" describes how individuals navigate between multiple legal orders in their daily lives, have argued that legal pluralism is not an anomaly but the normal condition of most human societies throughout history. On this view, the unified sovereign legal system is actually the exception rather than the rule, a product of particular historical circumstances associated with the rise of the modern European state, and the attempt to impose this model on postcolonial societies has done significant damage.

The relevance of this debate to Bangladesh is immediate and practical. Bangladesh operates a constitutional legal system grounded in the common law tradition inherited from British colonialism. But it also contains, as we will discuss in detail later, an elaborate system of personal law for family matters that differs between Muslim and Hindu citizens. It contains customary law practices in tribal areas, particularly in the Chittagong Hill Tracts, that operate with significant autonomy from the formal state legal system. It contains the practical reality of shalish, the indigenous village-level dispute resolution mechanism, which operates outside the formal courts but which resolves an enormous proportion of disputes in rural Bangladesh. Any serious analysis of the Bangladeshi legal system must grapple with this pluralism rather than pretending that Bangladesh has a simple, unified legal order.

The second philosophical question raised by the pre-colonial legal heritage is the question of the relationship between law and culture. The Dharmashastra tradition and the fiqh tradition were not merely formal systems of rules; they were embedded in comprehensive cultural and moral frameworks that gave law its meaning and its authority. Rules about inheritance made sense in the context of a broader understanding of family, community, and the individual's relationship to the social whole. Rules about contract and commerce made sense in the context of a broader understanding of honesty, trust, and the proper organization of economic life. Rules about criminal punishment made sense in the context of a broader understanding of moral responsibility, social harm, and the purposes of the state.

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When the British replaced these legal traditions, at least in the formal legal system, with transplanted English law, they did not merely change the rules. They disrupted the cultural framework within which law had meaning. This disruption has had lasting consequences. One of the persistent problems with the Bangladeshi legal system, which will recur throughout this textbook, is the disconnect between formal legal rules and the cultural understandings of the population that those rules are supposed to govern. This disconnect manifests itself in low rates of formal court use, in the persistence of informal dispute resolution mechanisms, in the difficulty of enforcing legal rights that are formally recognized but culturally contested, and in the general sense, shared by many Bangladeshi citizens, that the formal legal system is alien, expensive, slow, and unreliable.

CHAPTER TWO: THE COLONIAL LEGAL REVOLUTION AND ITS CONSEQUENCES

Section 2.1: The East India Company and the Beginning of Legal Transformation

The arrival of the British East India Company in Bengal and the gradual acquisition of legal authority that culminated in the Company's assumption of the Diwani rights of Bengal, Bihar, and Orissa in 1765 initiated one of the most profound legal transformations in the history of any part of the world. Understanding this transformation, in its full complexity, is essential for understanding the legal system of Bangladesh today, because the legal system of Bangladesh is in many fundamental respects still the legal system that the British built, modified and supplemented but still recognizable in its basic architecture.

The historiography of colonial law in South Asia has undergone a significant revolution in recent decades. The older Whig narrative, which told the story of British law as the gift of civilization to a people mired in superstition and tyranny, has been thoroughly discredited. In its place, a more complex and in many ways more troubling story has emerged. The new historiography, associated with scholars like Bernard Cohn, Ranajit Guha, Partha Chatterjee, Upendra Baxi, and most recently Mitra Sharafi and Rohit De, tells a story of legal transformation that was not simply imposed from above but was negotiated, contested, resisted, and appropriated by the colonized population in complex ways that produced outcomes no one had planned or anticipated.

The process began with the Regulating Act of 1773, which established the Supreme Court of Judicature at Fort William in Calcutta. This court, with its English judges applying English law, sat alongside the existing Mughal courts that the Company had inherited. The result was an immediate and persistent problem of jurisdiction: which court should hear which disputes, and which law should apply? The conflict between the Supreme Court and the Calcutta Council, which came to a head in the famous Patna case of 1777 involving the Kasijora zamindars, illustrated the fundamental tensions in the early colonial legal order. The English judges insisted on applying English common law principles that were designed for a very different social context; the Indian subjects of the Company found these principles alien and often unjust; and

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the Company's commercial interests were not always well served by strict adherence to English law.

The appointment of Sir William Jones as a judge of the Supreme Court in 1783 represented a significant turning point in the approach to this problem. Jones, one of the most remarkable scholars of the eighteenth century, arrived in Calcutta with the conviction that the solution to the problem of governing India lay in understanding and systematizing Indian law. His project of translating the foundational texts of Hindu and Islamic law, most notably his translations of Manu's Manusmriti as Institutes of Hindu Law and of Al-Sirajiyyah as the Mohammedan Law of Inheritance, was driven by the ambition of making Indian law legible to English judges and administrators. This ambition was well-intentioned, but its consequences were complex and not always beneficial.

The systematization of Hindu and Islamic law through translation and codification introduced a rigidity into traditions that had always been characterized by interpretive flexibility. When Jones translated the Manusmriti as if it were the definitive statement of Hindu law, he was treating a text that Indian jurisprudents had always read critically and contextually, weighing it against other texts and adapting it to local circumstances, as if it were a code with fixed and determinate meaning. The effect was to freeze traditions that had been dynamic, to privilege Brahminical Sanskrit texts over vernacular customary practices, and to create a version of "Hindu law" and "Mohammedan law" that was in important respects an English construction rather than an authentic indigenous tradition.

Bernard Cohn's brilliant essay "Law and the Colonial State in India," published in 1987 and widely cited since, analyzed this process in terms that have become foundational for the historiography of colonial law. Cohn argued that the colonial state used law as an instrument of "knowledge and power," not merely as a mechanism for resolving disputes but as a means of categorizing and ordering Indian society in ways that served colonial interests. The creation of distinct legal categories for Hindus and Muslims, for example, reinforced communal identities that had previously been more fluid, and laid some of the groundwork for the communal tensions that would culminate in the Partition of 1947. This is an argument about the political effects of legal categorization that deserves to be taken very seriously in any analysis of the postcolonial legal system.

Section 2.2: The Great Legislative Effort - Codification and the Indian Legal Codes

The nineteenth century saw one of the most ambitious legislative projects in the history of any legal system: the codification of the law for British India. This project, associated most prominently with Thomas Babington Macaulay, who served as Law Member of the Governor-General's Council from 1834 to 1838, produced the foundational codes that still govern large areas of law in Bangladesh today. The Indian Penal Code of 1860, the Code of Criminal Procedure (in its various iterations, leading to the current Bangladesh Code of Criminal Procedure 1898), the Code of Civil Procedure 1908, the Evidence Act 1872, the Contract Act 1872, the Transfer of Property Act 1882, the Specific Relief Act 1877, and numerous other statutes collectively constituted the colonial legal order that Bangladesh inherited upon independence.

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The philosophical justification for this codification project was explicitly utilitarian. Macaulay was a committed Benthamite, and his approach to law was shaped by Jeremy Bentham's conviction that law should be clear, accessible, and rationally organized so as to serve the greatest happiness of the greatest number. Bentham had spent decades campaigning for the codification of English law, arguing that the common law, with its obscure precedents and technical complexities, was a system designed to benefit lawyers rather than litigants. In India, Macaulay saw an opportunity to create from scratch the kind of rational, systematic legal code that Bentham had dreamed of but been unable to achieve in England itself.

The Indian Penal Code of 1860, which is the Direct ancestor of the Bangladesh Penal Code and remains in force in Bangladesh today with modifications, was in many ways a masterpiece of legislative drafting. Macaulay began work on it in 1837, and it was finalized and enacted after his departure by subsequent Law Commissioners. The Code is notable for its clarity, its logical organization, its comprehensive coverage of criminal conduct, and its attempt to combine the best elements of English criminal law with principles that could be applied sensibly to Indian conditions. It replaced the bewildering variety of criminal law that had previously been administered, which included English common law, Islamic criminal law (which had applied to Muslims), and various local customary practices.

The Evidence Act of 1872, drafted primarily by Sir James Fitzjames Stephen, represents another landmark in the colonial codification effort. Stephen's Evidence Act was, and remains, one of the most elegant pieces of legal drafting in the common law world. It systematized the law of evidence in a way that had not been achieved in England itself, organizing the chaotic mass of common law rules on relevance, admissibility, and proof into a coherent statutory framework. The Act remains in force in Bangladesh today, and while it has been supplemented by the Digital Security Act 2018 and other legislation dealing with electronic evidence, its basic structure continues to govern evidentiary questions in Bangladeshi courts.

The Contract Act of 1872, modelled on English contract law but adapted to Indian conditions, and the Transfer of Property Act 1882, which governs the law of property transactions, are similarly still foundational in Bangladesh. The Code of Civil Procedure 1908, which governs the procedure of civil courts in Bangladesh, is perhaps the most complex and most criticized of the colonial codes, its procedural requirements often seen as contributing significantly to the notorious delays in the Bangladeshi civil justice system. We will return to this point in later chapters.

What is philosophically significant about this codification project from the perspective of jurisprudence is the explicit choice it represented between competing understandings of the nature of law. The common law tradition, dominant in England, understood law as growing organically from precedent and custom, as a kind of social inheritance that was gradually refined through judicial decision-making over time. Edmund Burke's conservative legal philosophy, which celebrated the inherited wisdom of the common law as against the rationalist project of revolutionary codification exemplified by the French Code Napoleon, had been enormously influential in England. But Bentham's utilitarian critique of the common law, which denounced its obscurity, its technical complexity, its inaccessibility, and its tendency to serve lawyers'

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interests rather than those of justice, was ultimately the philosophy that shaped the legal codes of British India.

This tension between the common law's case-based, precedent-driven approach and the code's systematic, rule-based approach is not merely of historical interest. It plays out in the practice of Bangladeshi courts today. Bangladeshi judges are trained to look for precedents, to reason from decided cases, to treat judicial decisions as sources of law in the common law sense. But they are also applying statutory codes that were designed to be applied according to their text rather than through elaborate chains of case law interpretation. The result is a complex and sometimes confused mixture of approaches that creates real practical difficulties for practitioners and litigants alike.

Section 2.3: The High Court, the Legal Profession, and the Architecture of Colonial Justice

The architecture of the colonial court system in Bengal, which forms the direct predecessor of the current Bangladeshi court system, was established through a series of legislative and administrative acts over the course of the nineteenth century. The High Courts Act of 1861 consolidated the earlier Supreme Court and Sadr Diwani Adalat into a unified High Court at Calcutta, which exercised jurisdiction over all of Bengal including what is now Bangladesh. The Calcutta High Court was one of the most prestigious courts in Asia, and its decisions were regularly appealed to the Privy Council in London, whose judgments formed an important part of the common law heritage of South Asia.

The emergence of the legal profession in Bengal is a story of fascinating complexity. The earliest Indian lawyers appeared in the late eighteenth century as vakils and mukhtars, indigenous legal practitioners who had operated under the Mughal court system, supplemented by new entrants who had acquired enough English to practice before the colonial courts. The qualification requirements were minimal, the ethical standards unenforceable, and the quality varied enormously. Gradually, as the colonial courts became more important and more lucrative, a class of formally educated Indian lawyers emerged, some trained at the Inns of Court in London and some at the new law schools established in India.

The establishment of legal education in Bengal begins with the Calcutta University Act of 1857, which set up the University of Calcutta as an examining body. The Rippon College, established in 1882 and later renamed the Surendranath College, and the Government Law College, established to provide formal legal education in Bengal, were among the earliest institutions offering systematic instruction in law. The Dacca Law College, established in 1874 in what is now Dhaka, was among the foundational institutions of legal education in what would become Bangladesh. Understanding this history matters because the structure of legal education in Bangladesh today, with its division between university law faculties and the professional qualifying examination administered by the Bar Council, is directly descended from these colonial arrangements.

The Legal Practitioners Act of 1879 was a landmark statute in the history of the legal profession in South Asia. It established a system for the regulation of legal practitioners, requiring enrollment before the High Court and imposing minimum qualifications for practice. The Act

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distinguished between pleaders, who could practice before lower courts, and advocates, who could practice before the High Court. This distinction, between advocates authorized to practice before the superior courts and those limited to the subordinate courts, persists in modified form in the current Bangladeshi system, where advocates before the High Court Division must obtain a separate permission after passing an additional examination.

The development of a formal legal profession in colonial Bengal had consequences that went far beyond the merely technical. The emergence of a class of educated Indian lawyers provided one of the most important organizational and intellectual resources for the nationalist movement. Many of the most important figures of the Indian nationalist movement were lawyers: Gandhi, Nehru, Jinnah, Ambedkar, and, in the context of what would become Bangladesh, A.K. Fazlul Huq. The legal profession provided not only a livelihood but a framework of political thought, grounded in the vocabulary of rights, constitutionalism, and the rule of law, that was enormously important in shaping the character of South Asian nationalism.

This connection between the legal profession and political leadership has a complex legacy in Bangladesh. On the positive side, it means that the founders of the Bangladeshi state had a sophisticated legal education and a commitment to constitutionalism that shaped the fundamental structure of the 1972 Constitution. On the negative side, it means that the legal profession has historically enjoyed enormous prestige and political influence in Bangladesh, which has made reform of the profession, including reform of the Bar Council and legal education, politically difficult. Vested interests are always stronger when they are organized and influential, and the legal profession in Bangladesh has historically been very well organized and politically very influential indeed.

Section 2.4: The Partition, the Pakistan Period, and the Legal Heritage of 1947-1971

The Partition of British India in 1947, which created the independent states of India and Pakistan, had profound consequences for the legal system of what became East Pakistan, and therefore for Bangladesh. The territory of Bengal was divided, with West Bengal remaining in India and East Bengal becoming the eastern wing of Pakistan. The formal legal system was inherited intact from the British; the Indian Penal Code became the Pakistan Penal Code, the High Court of East Bengal succeeded the Calcutta High Court's jurisdiction in what is now Bangladesh, and the other colonial codes continued in force.

But the Pakistan period was not merely a continuation of the colonial legal order. The Constitution of Pakistan, adopted in 1956 after years of political struggle, established Pakistan as an Islamic Republic, and the question of the relationship between Islamic law and the inherited colonial legal system immediately became a central political and jurisprudential issue. The Islamic law debates in Pakistan are directly relevant to Bangladesh because many of the same tensions between secular and religious legal orders persist in contemporary Bangladesh, even though Bangladesh's 1972 Constitution established it as a secular state and the current Constitution describes Bangladesh as a republic "in which the absolute trust and faith in Almighty Allah" is a "fundamental principle of state policy," while also committing to separation of religion from political life. This constitutional tension is one of the defining features of Bangladeshi legal culture.

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The Lahore High Court, the West Pakistan courts, and the Supreme Court of Pakistan all functioned as institutions of the common law tradition during the Pakistan period, continuing the British-established pattern of precedent-based reasoning and hierarchical court structures. The East Pakistan High Court, established in Dhaka, served as the superior court for East Pakistan and its decisions contributed to the developing body of South Asian common law. Several of the judges who served on the East Pakistan High Court would later become foundational figures in the legal system of Bangladesh.

The Law Commission of Pakistan, established in 1958, produced reports on various aspects of the legal system, including legal education, that are relevant to the contemporary debate about legal education reform in Bangladesh. The Commission's reports noted many of the same problems that critics of the current system identify today: the disconnect between theoretical legal education and the practical skills required for professional practice, the inadequate training of new lawyers, the poor quality of instruction in many law colleges, and the lack of systematic professional development for practitioners. The fact that the same problems were identified more than sixty years ago and remain unresolved today is a commentary on the difficulty of legal reform in the South Asian context.

The period from 1947 to 1971 also saw the emergence of a distinctly Bengali legal nationalism that is important for understanding the political context within which the Bangladeshi legal system was created. The language movement of 1952, in which Bengali students and intellectuals fought for the recognition of Bengali as a co-official language of Pakistan alongside Urdu, was in part a movement about the language of law. If Urdu were the sole official language, then legal proceedings, official correspondence, and legal education would have to be conducted in a language that was not the mother tongue of the majority of East Pakistanis. The Language Movement's eventual success in securing official recognition for Bengali was not only a cultural and political victory; it was a legal and jurisprudential statement about the relationship between language, community, and legal authority.

The constitutional negotiations and conflicts of the Pakistan period, particularly the Six Points movement articulated by Sheikh Mujibur Rahman in 1966, were fundamentally about the distribution of legal and political power between East and West Pakistan. The Six Points demanded a federal system with significantly greater autonomy for East Pakistan, a separate currency or foreign exchange account, paramilitary forces, and the right to trade independently with foreign countries. These demands, rooted in the political economy of an unequal federal relationship, were also demands about the proper limits of constitutional authority and the rights of regional populations within a federal state. The failure of the Pakistani state to accommodate these demands, and the brutal military crackdown of March 1971, led directly to the liberation war and the creation of Bangladesh.

CHAPTER THREE: THE LIBERATION WAR, THE CONSTITUTION, AND THE JURISPRUDENTIAL FOUNDATIONS OF BANGLADESH

Section 3.1: The Liberation War as a Legal and Constitutional Event

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The liberation war of 1971 is often understood primarily as a military and political event, which of course it was. But it was also a profound legal and constitutional event, and understanding its legal dimensions is essential for understanding the jurisprudential foundations of the Bangladeshi state. The war was fought in the name of self-determination, one of the most contested and philosophically rich principles in international law, and the state that emerged from it was constituted through a set of foundational legal acts that embedded certain philosophical commitments into the basic structure of the constitutional order.

The Proclamation of Independence, issued on April 10, 1971, by the elected representatives of Bangladesh assembled in Mujibnagar, was the founding constitutional act of Bangladesh. It proclaimed Bangladesh a sovereign republic based on "equality, human dignity, and social justice," and it promised to the people of Bangladesh "a Constitution guaranteeing democratic rights, fundamental rights, and social justice." These commitments were not merely rhetorical; they reflected a genuine constitutional philosophy that had been shaped by the experience of colonial subjugation, by the political philosophy of Bengali nationalism, and by the universal values articulated in the emerging body of international human rights law.

The principle of self-determination, which provided the international legal foundation for Bangladesh's claim to statehood, has a complex history in international law that is worth examining in some detail. The right of peoples to self-determination was articulated in Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, both adopted in 1966. But the concept is considerably older, tracing its roots to the Wilsonian principle of national self-determination articulated at the Paris Peace Conference of 1919, and further back to the democratic theory of popular sovereignty that had been central to the American and French Revolutions.

The philosophical tension within the self-determination principle is between two potentially conflicting values: the right of a people to govern themselves, which may require the dissolution or modification of existing state boundaries, and the principle of territorial integrity, which holds that existing state boundaries should be respected and not altered by force. This tension is not resolved in international law, which has managed it through what the International Court of Justice has called a "constructive ambiguity" that allows both principles to be affirmed without the conflict between them being explicitly addressed. The Bangladesh case is one of the most important precedents in the modern international law of self-determination, and it remains controversial: was Bangladesh's secession from Pakistan legally justified under international law, or was it a violation of the principle of territorial integrity? The better view, reflected in the overwhelming international recognition of Bangladesh after its independence, is that the genocidal nature of the Pakistani military's actions removed any legitimate basis for insisting on the maintenance of Pakistani territorial integrity at the cost of the massacre of the Bengali population.

The Bangladeshi Liberation War also raised important questions about the laws of armed conflict and war crimes law. The atrocities committed by the Pakistani military and its collaborators during the war of 1971 were of a magnitude that would today clearly constitute crimes against humanity and genocide under international criminal law. The International Crimes (Tribunals) Act 1973, enacted by Bangladesh in the immediate aftermath of independence, established a

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framework for prosecuting these crimes, though the trials that eventually took place under this Act, conducted more than four decades after the events in question, have been the subject of significant controversy regarding due process and fair trial standards. We will return to the International Crimes Tribunal Bangladesh (ICT-BD) and its controversies in later chapters, as it raises profound questions about transitional justice, the relationship between international and domestic criminal law, and the independence of the judiciary.

Section 3.2: The Constitution of 1972 - Philosophical Architecture and Jurisprudential Foundations

The Constitution of the People's Republic of Bangladesh, adopted on November 4, 1972, is one of the most philosophically ambitious constitutional documents in South Asian history. Drafted with impressive speed, it came into force on December 16, 1972, the first anniversary of Bangladesh's victory in the liberation war. The Constitution's philosophical foundations were articulated through what it called the "Fundamental Principles of State Policy," which included nationalism, socialism, democracy, and secularism. These four principles, sometimes called the "four pillars" of the original Constitution, represented a distinctive constitutional philosophy that combined Bengali nationalism, a commitment to social justice, democratic governance, and the separation of religion from state affairs.

The philosophical depth of the original 1972 Constitution can be appreciated by examining each of these foundational principles in jurisprudential terms. The principle of nationalism in the Constitution was not ethnic nationalism in the narrow sense but rather what might be called civic nationalism rooted in a specific historical and cultural experience. The Preamble to the Constitution, which is one of the most eloquent constitutional preambles ever written, speaks of the "historic struggle for national liberation" and commits Bangladesh to the realization of the goals for which "millions of our people have made the supreme sacrifice." This framing of the constitutional project in terms of the sacrifices of liberation embeds a specific historical obligation into the basic law of the state.

The principle of socialism in the 1972 Constitution deserves careful jurisprudential analysis, because it is often misunderstood. The Constitution did not commit Bangladesh to a fully socialist economic system in the Marxist sense; it committed the state to ensuring "a socialist economic system in order to establish a just and egalitarian society" and to guaranteeing "a basic necessities of life, including food, clothing, shelter, education and medical care." These commitments are better understood as social democratic commitments to economic rights and social justice than as orthodox socialist commitments to state ownership of the means of production. They reflect the influence of Fabian socialism, which was enormously influential among South Asian educated elites of the generation that founded Bangladesh, as much as Marxist socialism.

The principle of democracy in the Constitution was understood in a rich and substantive sense that went beyond mere electoral competition. The Constitution guaranteed a wide range of fundamental rights, including freedom of thought and conscience, freedom of speech and expression, freedom of assembly and association, and freedom of movement. These rights were justiciable, meaning that citizens could challenge violations of them in the courts. The inclusion

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of extensive fundamental rights in the Constitution was influenced by the Indian Constitution of 1950, which was itself influenced by the Universal Declaration of Human Rights of 1948 and by the American Bill of Rights.

The principle of secularism in the 1972 Constitution was perhaps the most philosophically ambitious and, as subsequent history has shown, the most politically fragile of the four principles. Secularism in the context of the 1972 Constitution meant primarily the prohibition of religious discrimination and the exclusion of religion from the formal political process. Article 12 of the original Constitution prohibited the use of religion for political purposes and the establishment of religion-based political parties. This commitment to secularism was directly shaped by the experience of Pakistani state-sponsored Islamic ideology as a tool of oppression against Bengali cultural identity, and by the liberation movement's secular character.

The subsequent constitutional history of Bangladesh has involved a dramatic reversal of this secular commitment. The Fourth Amendment to the Constitution, enacted in January 1975 by the government of Sheikh Mujibur Rahman, replaced the multiparty parliamentary system with a one-party presidential system and established BAKSAL (Bangladesh Krishak Sramik Awami League) as the sole political party. This was a catastrophic constitutional moment that fundamentally contradicted the democratic principles on which the Constitution had been founded. The Fifth Amendment to the Constitution, passed in 1979 by the government of Ziaur Rahman following the military coup of 1975, made a series of far-reaching changes including the replacement of secularism with "absolute trust and faith in Almighty Allah" as a fundamental principle and the insertion of the phrase "Bismillah-ir-Rahman-ir-Rahim" (In the name of Allah, the most Beneficent, the most Merciful) into the Preamble.

The legal validity of these amendments has been extensively litigated in the Bangladeshi courts. The Supreme Court of Bangladesh's Appellate Division in the case of Bangladesh Italian Marble Works Ltd v Government of Bangladesh (2010), commonly known as the Eighth Amendment case, established the doctrine that there are certain basic features of the Constitution that cannot be amended even by Parliament acting with the required supermajority. This doctrine, adopted from Indian constitutional jurisprudence, particularly the landmark Indian Supreme Court case of Kesavananda Bharati v State of Kerala (1973), holds that Parliament's amending power is limited by the essential structure of the Constitution and cannot be used to destroy the fundamental character of the constitutional order.

The Fifteenth Amendment to the Constitution, enacted in 2011 by the Awami League government of Sheikh Hasina, restored some of the original constitutional language, including the secular preamble and the prohibition on religion-based political parties, while simultaneously making other changes that were themselves constitutionally controversial, including the removal of the provision for a caretaker government during elections. The constitutional battles over these amendments are not merely technical legal disputes; they reflect deep philosophical disagreements about the identity of the Bangladeshi state, the proper relationship between religion and politics, and the limits of majority power in a constitutional democracy.

Section 3.3: The Rule of Law in Bangladeshi Constitutionalism - Theory and Practice

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The concept of the rule of law, which is central to both the Constitution of Bangladesh and to any serious analysis of the Bangladeshi legal system, is far more philosophically complex than its everyday usage suggests. At its most basic level, the rule of law means that the exercise of governmental power must be authorized by law and subject to legal constraint. But this basic definition conceals a wealth of philosophical disagreement about what the rule of law requires, how it relates to democracy and justice, and what institutional arrangements are necessary to sustain it.

A.V. Dicey, the great Victorian constitutional lawyer whose The Law of the Constitution (1885) provided the canonical formulation of the English doctrine of the rule of law, identified three elements: the supremacy of regular law over arbitrary power, equality before the law, and the derivation of constitutional principles from the decisions of the courts in particular cases rather than from a written constitution. All three of these elements are present in modified form in the Bangladeshi constitutional system, though each requires significant qualification when applied to the Bangladeshi context.

The supremacy of law over arbitrary power is guaranteed in Article 7 of the Constitution of Bangladesh, which provides that "all powers in the Republic belong to the people" and that the Constitution is "the solemn expression of the will of the people" that is supreme over all other laws and instruments. But the formal supremacy of the Constitution has not always been reflected in the actual exercise of governmental power. Bangladesh's constitutional history has been punctuated by periods of military rule, states of emergency, and executive action that was of questionable legal validity. The experience of military government from 1975 to 1990, interrupted only briefly, represents a period during which formal constitutional guarantees were suspended or effectively nullified, and during which the rule of law in any meaningful sense was not operative.

Equality before the law, guaranteed in Article 27 of the Constitution, is formally assured but practically limited in important ways. Access to justice in Bangladesh is constrained by cost, by geography, by delay, and by the information asymmetries that inevitably disadvantage the poor, the uneducated, and the politically weak when they encounter a legal system designed by and for a professional elite. The persistence of poverty in Bangladesh, and the correlation between poverty and legal powerlessness, means that formal equality before the law coexists with substantial practical inequality in the legal system. This tension between formal and substantive equality is a central concern of contemporary legal reform debates in Bangladesh.

The third element of Dicey's rule of law, the derivation of constitutional principles from judicial decisions, is relevant to Bangladesh's common law heritage. Bangladeshi courts do derive constitutional principles from their own prior decisions and from decisions of courts in other common law jurisdictions, particularly India, England, and Canada. The use of comparative constitutional materials in Bangladeshi judicial decision-making is an interesting feature of the system that reflects both the common law tradition and the genuinely comparative approach that judges trained in that tradition tend to adopt when confronting novel constitutional questions.

Lon Fuller, the American legal philosopher whose masterwork The Morality of Law (1964) proposed what he called the "inner morality of law," provided a more procedural and more

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nuanced account of the rule of law than Dicey. Fuller identified eight criteria that a legal system must satisfy to constitute a genuine legal system rather than a system of arbitrary commands: laws must be general, publicly promulgated, prospective rather than retroactive, clear and understandable, free of contradictions, possible to comply with, reasonably stable over time, and administered in a way that conforms to the promulgated rules. These criteria are procedural rather than substantive; they say nothing about the content of laws but only about the formal properties they must have. Fuller's criteria are useful as a checklist for evaluating the quality of the Bangladeshi legal system, and as we will see throughout this textbook, the system performs unevenly against these criteria. Laws are sometimes promulgated without adequate public notice, sometimes internally inconsistent, sometimes so delayed in their administration as to be practically impossible to rely upon.

Joseph Raz, the Oxford legal philosopher, added to the discussion of the rule of law with his influential argument in The Authority of Law (1979) that the rule of law is a specific political ideal, not to be conflated with democracy or justice, whose core requirement is that "people should be able to be guided by the law." This requires that laws be stable, clear, and applied by independent courts through fair procedures. Raz's account is valuable for its precision and for its insistence that the rule of law is compatible with substantively unjust legal systems, which means that achieving the rule of law is necessary but not sufficient for a just legal order. Bangladesh could theoretically have an excellent rule of law while still having many unjust laws. The goal of a complete program of legal reform must therefore combine the strengthening of rule of law institutions with attention to the substantive content of the laws those institutions enforce.

CHAPTER FOUR: THE PHILOSOPHY OF LAW AND JURISPRUDENTIAL SCHOOLS IN THE BANGLADESHI CONTEXT

Section 4.1: Natural Law Theory and its Relevance to Bangladesh

Jurisprudence, the philosophical study of law, is not merely an academic exercise for the intellectually curious. It is the foundation upon which any serious engagement with legal reform must rest. The choices made about how to reform a legal system, what values to prioritize, which institutions to strengthen, which rules to change, all depend on prior philosophical commitments about the nature of law, the grounds of its authority, and the values it is designed to serve. Understanding the major schools of jurisprudential thought is therefore essential for anyone who wants to engage seriously with the reform of the Bangladeshi legal system.

Natural law theory, the oldest and most persistently influential tradition in Western jurisprudence, holds that there is a higher law, grounded in reason, nature, or divine will, against which positive law (human-made law) must be evaluated. Law that contradicts natural law is, in some sense and to some degree, not truly law or not truly binding. The natural law tradition encompasses an enormous range of philosophical positions, from the Stoic conception of universal reason to Aquinas's theological natural law, from Grotius's secular natural law to Finnis's contemporary natural law theory.

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The relevance of natural law thinking to the Bangladeshi legal system is both obvious and complex. On the most obvious level, the Constitution of Bangladesh guarantees fundamental rights that are treated as having a special status precisely because they are understood as grounded in something more fundamental than the political decisions of any particular majority. The framers of the 1972 Constitution drew on the tradition of natural rights theory, mediated through the Universal Declaration of Human Rights and the Indian Constitution, in articulating the fundamental rights that the state is obligated to respect. When the Supreme Court of Bangladesh identifies a "basic structure" of the Constitution that cannot be altered even by constitutional amendment, it is implicitly invoking a natural law-like idea: that there are certain fundamental principles that are so basic to the constitutional order that they have a claim to authority that transcends even the democratic process.

The Islamic natural law tradition, embodied in the concept of maqasid al-sharia that we discussed in Chapter One, is relevant to Bangladesh because of the predominance of the Muslim population and the formal acknowledgment in the Constitution that "absolute trust and faith in Almighty Allah" is a fundamental principle. The maqasid tradition offers a framework for evaluating law in terms of the fundamental human goods it is designed to protect, and this framework has been increasingly influential in contemporary Islamic legal thought. Scholars like Tariq Ramadan and Abdullahi Ahmed An-Na'im have argued for a reformed Islamic jurisprudence that uses the maqasid framework to argue for human rights and democracy as genuinely Islamic values. This argument is highly relevant to Bangladesh's ongoing negotiation of the relationship between Islamic values and constitutional democracy.

John Finnis, the Australian legal philosopher whose Natural Law and Natural Rights (1980) represents the most sophisticated contemporary statement of natural law theory, argues that there are seven basic goods (life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion) that are self-evidently valuable and provide the ultimate justification for legal rules. Finnis argues that a legal system is justified insofar as it serves these basic goods and promotes a community in which individuals can flourish. The Finnis framework is useful for evaluating legal education reform: does the current system of legal education in Bangladesh serve the genuine human goods of knowledge, practical competence, and sociability that law students need to flourish as legal professionals? The honest answer, as we will argue in later chapters, is that it does not do so well enough.

Section 4.2: Legal Positivism and the Command Theory of Law

Legal positivism, the school of thought that insists on the separation of law as it is from law as it ought to be, and that defines law in terms of social facts rather than moral considerations, has been enormously influential in shaping how lawyers and judges in Bangladesh think about their work, even if they would not describe their thinking in these terms. The positivist tradition begins with John Austin's command theory of law, developed most fully in The Province of Jurisprudence Determined (1832), which defined law as the command of a sovereign backed by the threat of sanction. This definition was clearly influenced by the context of the British Empire, in which sovereign commands backed by force were a very visible feature of legal reality.

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H.L.A. Hart's sophisticated reformulation of legal positivism in The Concept of Law (1961), which remains probably the most influential book in twentieth-century jurisprudence, replaced Austin's command theory with the concept of law as a system of rules. Hart distinguished between primary rules (which impose duties and confer rights on individuals) and secondary rules (which specify how primary rules are to be identified, changed, and applied). The most important secondary rule is the "rule of recognition," which identifies the criteria that a rule must satisfy to count as law within a particular legal system. In Bangladesh, the rule of recognition is essentially constitutional: a rule is law if it has been enacted by the appropriate body (Parliament, or a competent delegating authority) in accordance with constitutional procedure and has not been invalidated by the courts.

Hart's framework is useful for analyzing the Bangladeshi legal system because it draws attention to the hierarchical structure of the system and to the importance of secondary rules for the functioning of the system as a whole. The Bangladesh Bar Council Order 1972 is itself a secondary rule in the Hartian sense: it specifies how advocates are to be qualified, enrolled, and regulated, and it thereby identifies who has the authority to act as a legal professional within the system. The reform proposals that we will discuss throughout this textbook, including the reform of the enrollment examination, the abolition of the two-year LLB program, and the reform of the Bar Council's governance structure, are all proposals about secondary rules. They are proposals to change the rules that specify how the primary rules of the legal system are to be administered and applied.

Ronald Dworkin's critique of Hart, developed most fully in Law's Empire (1986) and earlier in Taking Rights Seriously (1977), is enormously important for understanding the interpretive practice of common law courts, including Bangladeshi courts. Dworkin argued that Hart's picture of law as a system of rules is incomplete because it neglects the role of principles in legal reasoning. Judges do not simply apply rules mechanically; they also invoke principles, which are standards that support a particular direction of legal decision-making without specifying exactly what that decision must be. When a Bangladeshi judge invokes the principle that legislation should be interpreted in accordance with the Constitution, or the principle that criminal statutes should be interpreted narrowly in favor of the accused, or the principle of legality, she is invoking Dworkinian principles that are not themselves statutory rules but that nonetheless have genuine legal force.

Dworkin's central methodological claim, that the correct legal answer in any case is determined by the theory of legal and political morality that "best fits and justifies" the legal materials (statutes, precedents, constitutional provisions), has been controversial but highly influential. It implies that legal reasoning is not purely formal or mechanical but involves genuine moral argument, and that there is in principle a right answer to hard legal questions even if it is difficult to identify. This implication is important for legal reform: if the quality of legal reasoning in Bangladeshi courts is inadequate, if judges and lawyers are poorly trained in the skills of substantive legal argument, then the legal system will produce worse outcomes even if the formal rules are perfectly adequate. Improving the quality of legal education and professional training is therefore not merely a technical matter of conveying information; it is a matter of improving the quality of the moral and legal reasoning that the legal system depends upon.

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Section 4.3: Legal Realism and Sociological Jurisprudence

The American Legal Realism movement of the 1920s and 1930s, associated with scholars like Karl Llewellyn, Jerome Frank, and Felix Cohen, mounted a devastating critique of legal formalism, the view that legal rules determine legal outcomes in a straightforward and predictable way. The Realists argued that law-in-action often differed significantly from law-in-the-books, that judicial decisions were influenced by factors other than purely logical reasoning from legal rules, and that the proper method of legal study was empirical rather than formal. Frank's Courts on Trial (1949) and Llewellyn's The Bramble Bush (1930) were among the most influential texts of this movement.

The Legal Realist insight is directly relevant to any analysis of the Bangladeshi legal system, because the gap between law-in-the-books and law-in-action in Bangladesh is very wide indeed. The formal constitutional and statutory law of Bangladesh guarantees numerous rights and protections that are often honored in the breach. The formal procedural rules of the Code of Civil Procedure, if applied faithfully, would produce a civil justice system far more efficient than the one Bangladesh actually has. The formal professional standards of the Bar Council, if enforced rigorously, would produce a legal profession of considerably higher competence and integrity than the one Bangladesh actually has. Understanding these gaps is not merely descriptively important; it is essential for the design of effective reform. Reforms that address only the formal rules without attending to the social, political, and institutional factors that produce the gap between formal rules and actual practice will inevitably fail.

Roscoe Pound, the American legal scholar who developed what he called "sociological jurisprudence" in the early twentieth century, argued that law must be understood as a social institution and that legal rules must be evaluated in terms of their social effects. Pound's concept of "social interests," the broadly shared social needs and expectations that law is designed to serve, provides a useful framework for evaluating the current Bangladeshi legal system. Is the current legal education system serving the social interest in having a competent and ethical legal profession? Is the current enrollment examination system serving the social interest in quality control? Is the current structure of the Bar Council serving the social interest in an independent and well-governed professional body? These are empirical questions as much as philosophical ones, and answering them requires both conceptual clarity about what the relevant interests are and empirical investigation into whether the current system serves them.

Eugen Ehrlich, the Austro-Hungarian legal scholar whose Fundamental Principles of the Sociology of Law (1913) anticipated many later developments in legal sociology, introduced the concept of the "living law," the social norms and practices that actually govern behavior as distinguished from the formal law of the state. Ehrlich's concept is particularly resonant in the Bangladeshi context, where a significant proportion of social life, including dispute resolution, commercial transactions, and family relations, is governed by informal norms and practices that operate alongside, sometimes in place of, and sometimes in tension with the formal legal system. The shalish, the village arbitration system, is a prime example of "living law" in the Bangladeshi sense, and any serious account of the Bangladeshi legal system must engage with it.

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Section 4.4: Critical Legal Studies, Postcolonial Legal Theory, and the Bangladeshi Legal System

The Critical Legal Studies (CLS) movement, which emerged in American law schools in the late 1970s and 1980s, offered a more radical critique of mainstream legal thought than either Legal Realism or sociological jurisprudence. CLS scholars, including Roberto Unger, Duncan Kennedy, Mark Tushnet, and Morton Horwitz, argued that law is fundamentally indeterminate (legal rules do not determine legal outcomes but only provide resources that can be deployed in multiple directions), that law is ideological (legal doctrine systematically favors the interests of the powerful over those of the powerless), and that legal thought needs to be "trashed" and rebuilt on more genuinely emancipatory foundations.

While many of the specific claims of CLS have been contested and its program of reconstruction has been criticized as vague, the CLS critique has been enormously influential in directing attention to the political dimensions of legal doctrine and the ways in which apparently neutral legal rules can systematically disadvantage particular social groups. This critique is directly relevant to the analysis of the Bangladeshi legal system. The Bar Council's enrollment examination, for example, might appear to be a neutral and objective quality control mechanism. But if the content of the examination systematically favors candidates from elite educational backgrounds, or if the administration of the examination is influenced by political and personal connections, then it functions as a mechanism of class reproduction rather than a genuine meritocratic filter. We will examine this argument in detail in later chapters.

Postcolonial legal theory, which emerged in the 1990s and 2000s drawing on the work of scholars like Upendra Baxi, Ratna Kapur, Rajeev Bhargava, and Boaventura de Sousa Santos, is even more directly relevant to the Bangladeshi context. Postcolonial legal scholars have analyzed the ways in which the colonial legal order continues to shape postcolonial legal systems, not merely through the persistence of colonial statutes and institutions but through the persistence of colonial epistemologies, the ways of thinking about law and legal knowledge that were installed by colonialism and that continue to influence how law is taught, practiced, and understood.

Upendra Baxi, one of the most brilliant and prolific legal scholars in the South Asian tradition, has written extensively on the crisis of the Indian legal system in terms that are equally applicable to Bangladesh. In his The Crisis of the Indian Legal System (1982) and subsequent works, Baxi argued that the Indian (and by extension South Asian) legal system suffers from a fundamental legitimacy deficit, that the vast majority of the population has no meaningful access to formal law and no reason to regard the formal legal system as serving their interests. This legitimacy deficit is rooted in the colonial origins of the system, its design for the interests of colonial administration and commerce, and its failure to be genuinely transformed in the postcolonial period to serve the needs of the majority population.

The postcolonial critique has specific implications for legal education. Legal education in Bangladesh, as in most postcolonial countries, teaches law primarily through texts and methods inherited from the colonial period. The curriculum is dominated by English common law cases, supplemented by Bangladeshi statutes that are themselves mostly colonial in origin or colonial in style. The pedagogical methods employed, the lecture-based transmission of information from

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professor to passive student, reflects educational methods that were standard in colonial institutions. The entire enterprise of legal education is conducted in English, a language that is not the mother tongue of the vast majority of Bangladeshi law students and that creates a significant barrier between legal professionals and the population they serve.

These are not trivial problems. They go to the heart of what legal education is for and what the legal profession is supposed to do in a democratic society. A legal profession that is trained in a foreign language, through foreign texts, using foreign pedagogical methods, to apply laws designed for a foreign administrative purpose, cannot function well as the guardian of justice in a democratic society. The reforms that this textbook advocates, including the strengthening of Bengali-language legal education, the introduction of clinical legal education, the development of genuinely Bangladeshi legal scholarship, and the reform of the professional qualification system, are not merely technical improvements. They are steps toward the genuine decolonization of the legal system.

CHAPTER FIVE: THE STRUCTURE OF THE BANGLADESHI LEGAL SYSTEM

Section 5.1: The Constitutional Framework - Separation of Powers and Constitutional Governance

The constitutional structure of Bangladesh, as established by the Constitution of 1972 and modified by numerous subsequent amendments, provides the overarching framework within which the entire legal system operates. Understanding this structure is essential for understanding the Bar Council, legal education, and the reform proposals that will be discussed throughout this textbook, because all of these exist within and are constrained by the constitutional order.

Bangladesh is a unitary state with a parliamentary system of government. Unlike India, which is a federal state with significant constitutional powers distributed between the Union and the States, Bangladesh has a single national government that is sovereign throughout the territory. This means that the regulation of legal education and the legal profession is exclusively a national matter, without the complication of competing state jurisdictions that exists in India or the United States. The Parliament of Bangladesh (the Jatiya Sangsad) has the power to legislate on all subjects, and the Constitution does not establish a division of legislative powers between national and sub-national governments.

The separation of powers in the Bangladeshi Constitution is between the Legislature (the Jatiya Sangsad), the Executive (the Cabinet headed by the Prime Minister), and the Judiciary (the Supreme Court and the subordinate courts). In formal constitutional terms, this separation is clear and well-established. In practice, the relationship between these three branches has been characterized by significant tensions and imbalances throughout Bangladesh's history.

The relationship between the executive and the legislature has been particularly problematic. The Westminster-style parliamentary system that Bangladesh adopted means that the government of

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the day commands a majority in Parliament, and therefore parliamentary oversight of the executive tends to be less robust than in systems where the two branches are more clearly separated. The culture of parliamentary debate in Bangladesh has not always been characterized by the kind of vigorous, substantive engagement with legislative proposals that would serve as an effective check on executive power. The passage of important legislation without adequate public debate, or through the rubber-stamping of executive decisions without genuine legislative scrutiny, has been a recurring feature of Bangladeshi parliamentary practice.

The relationship between the judiciary and the other two branches is, from the perspective of legal reform, the most important. An independent judiciary, capable of enforcing constitutional limits on executive and legislative power and protecting the rights of individuals against state interference, is a precondition for the rule of law and for effective legal reform. The independence of the Bangladeshi judiciary has been a subject of persistent concern and controversy.

The formal constitutional guarantee of judicial independence is strong. Article 94 of the Constitution provides that a Justice of the Supreme Court shall not be removed except by an order of the President passed pursuant to an address by Parliament supported by a majority of not less than two-thirds of the total number of members. Judges of the Supreme Court hold office until they reach the age of sixty-seven. The Constitution also prohibits Parliament from enacting legislation that curtails the jurisdiction of the Supreme Court.

However, the formal guarantees of judicial independence have not always translated into actual independence. The subordinate judiciary, comprising the district courts, sessions courts, and magistrates' courts, where the vast majority of Bangladeshi cases are heard, has historically been controlled by the executive through the Ministry of Law, Justice and Parliamentary Affairs. Judges of the subordinate judiciary were appointed, transferred, and promoted by the executive, creating conditions of executive dependence that could influence judicial behavior. The Supreme Court's landmark judgment in Masdar Hossain v Secretary, Ministry of Finance (1999), commonly known as the Masdar Hossain case, ordered the separation of the subordinate judiciary from executive control, but implementation of this judgment has been slow and incomplete.

Section 5.2: The Court System - Hierarchy, Jurisdiction, and Procedure

The court system of Bangladesh is organized in a hierarchical structure with the Supreme Court at its apex. Understanding this structure is important not only for understanding how disputes are resolved but also for understanding the professional pathways available to lawyers and the institutional context within which the Bar Council operates.

The Supreme Court of Bangladesh consists of two divisions: the Appellate Division and the High Court Division. The Appellate Division, which sits in Dhaka, is the highest court in Bangladesh for all matters, including constitutional questions. Its jurisdiction is primarily appellate, hearing appeals from the High Court Division in civil and criminal matters. The Appellate Division also has original jurisdiction to enforce fundamental rights in certain circumstances and has special constitutional significance as the final arbiter of constitutional questions.

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The High Court Division of the Supreme Court exercises both original and appellate jurisdiction. Its original jurisdiction is particularly important for constitutional matters: it hears writ petitions challenging the actions of public authorities on constitutional grounds, including certiorari, mandamus, prohibition, quo warranto, and habeas corpus petitions. The writ jurisdiction of the High Court Division, exercised under Article 102 of the Constitution, has been one of the most active and significant areas of Bangladeshi constitutional adjudication. Cases involving challenges to executive actions, governmental decisions, and legislative measures are brought before the High Court Division through the writ jurisdiction, and the resulting decisions have significantly shaped the constitutional jurisprudence of Bangladesh.

The administrative courts also deserve attention in any comprehensive account of the court system. The Administrative Tribunal established under the Administrative Tribunals Act 1980 has jurisdiction over service matters relating to persons in the service of the Republic. Appeals from the Administrative Tribunal lie to the Administrative Appellate Tribunal, and further appeals, on questions of law, to the Appellate Division of the Supreme Court.

Below the Supreme Court, the subordinate courts consist of the district courts, sessions courts, and magistrates' courts. The district courts, presided over by District Judges and Additional District Judges, exercise civil jurisdiction in all civil matters arising within their districts above certain threshold values. The Sessions Courts, presided over by Sessions Judges and Additional Sessions Judges, exercise criminal jurisdiction over serious criminal offences. Magistrates' courts exercise jurisdiction over minor criminal matters and conduct preliminary inquiries into more serious charges.

The functioning of the subordinate court system is a source of enormous concern from the perspective of access to justice. Case backlogs in the Bangladeshi court system are staggering: millions of cases are pending at various levels of the court system, and the average time for a civil case to be resolved in a district court can run into many years, in extreme cases into decades. The delay in justice is not merely a practical inconvenience; it is a systemic denial of justice. As the famous legal maxim, associated with the English legal reformer William Gladstone, holds: "Justice delayed is justice denied." In Bangladesh, justice is routinely delayed by years and sometimes decades, and this denial of timely justice falls disproportionately on the poor and the politically weak, who cannot afford the sustained legal representation and the persistence that a prolonged case requires.

The causes of case backlog in the Bangladeshi court system are multiple and mutually reinforcing. There are too few judges relative to the population: the judge-to-population ratio in Bangladesh is dramatically lower than in comparable countries, and the number of judges has not kept pace with population growth or with the growing demand for formal legal services. The physical infrastructure of many courts is inadequate: courtrooms are overcrowded, court records are poorly maintained, and the absence of modern case management systems makes it difficult to schedule and track cases efficiently. The procedural rules governing civil litigation, derived from the Code of Civil Procedure 1908, contain numerous provisions that create opportunities for procedural delays, including extensive rights of appeal against interlocutory orders, the requirement of physical attendance for many routine procedural steps, and the absence of effective mechanisms for penalizing parties who deliberately delay proceedings.

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Section 5.3: The Subordinate Judiciary and Its Challenges

The subordinate judiciary in Bangladesh faces challenges that go beyond mere case backlog, important as that problem is. The quality of judicial decision-making in the subordinate courts is a persistent source of concern. Many judges of the subordinate courts lack adequate training in legal research, in the construction of reasoned judgments, and in the application of principles of evidence and procedure. The Bangladesh Judicial Service Commission (BJSC) conducts a competitive examination for recruitment to the Bangladesh Judicial Service, and candidates who pass this examination receive some training at the Judicial Administration Training Institute (JATI). But the training provided is often inadequate for the demands of judicial office, and the continuing education of judges after appointment is insufficient.

The relationship between the subordinate judiciary and the bar is another area of concern. The culture of the subordinate courts in Bangladesh is one in which the relative status of the judge and the senior advocate is complex and sometimes contested. Senior advocates in busy district courts can exercise significant influence over the pace and conduct of proceedings, and the bar-bench relationship is not always characterized by the mutual respect and professional distance that is essential for the proper functioning of the adversarial system. The problem of adjournments is symptomatic of this: cases are routinely adjourned at the request of advocates, often for reasons of convenience rather than necessity, and courts have been insufficiently assertive in refusing unnecessary adjournments and maintaining control of their own dockets.

The district bar associations, which govern the professional life of advocates practicing in the subordinate courts, are important institutions that have received insufficient attention in most academic analyses of the Bangladeshi legal system. The culture and internal governance of the district bar associations significantly influences the quality of legal practice in the subordinate courts. In many districts, bar association politics are intensely competitive and sometimes disorderly, elections to bar association offices are contested with a fervor that rivals national political elections, and the internal governance of bar associations is not always characterized by the transparency and accountability that professional self-governance requires.

The geographical distribution of the legal profession is another important structural issue. Dhaka dominates the legal profession in Bangladesh to an extraordinary degree. The Supreme Court, the most prestigious venue for legal practice, is in Dhaka. The most successful law chambers are in Dhaka. The legal profession is concentrated in the major cities, leaving large areas of rural Bangladesh significantly underserved. This geographical imbalance in the distribution of legal services is a major obstacle to access to justice, and it is connected to broader inequalities in the educational and economic geography of the country.

CHAPTER SIX: SOURCES OF LAW IN BANGLADESH

Section 6.1: Constitutional Law as the Supreme Source

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In the formal hierarchy of legal sources in Bangladesh, the Constitution stands at the apex. Article 7(2) of the Constitution declares it to be "the supreme law of Bangladesh" and provides that "if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void." This formal supremacy of the Constitution over all other sources of law is what makes Bangladesh a constitutional state in the modern sense, a state in which the exercise of governmental power is subject to constitutional limits that can be enforced through judicial review.

The interpretation of constitutional provisions by the Supreme Court of Bangladesh constitutes one of the most important bodies of legal development in the country. The Supreme Court has, over the course of more than fifty years, developed an extensive constitutional jurisprudence on the interpretation of fundamental rights, on the scope of parliamentary power, on the permissible limits of constitutional amendment, and on numerous other constitutional questions. This jurisprudence has been influenced by the constitutional decisions of comparable courts in other common law jurisdictions, particularly India, England, and Canada, but it has also developed distinctive features reflecting Bangladesh's specific constitutional history and social context.

The influence of Indian constitutional jurisprudence on Bangladesh is particularly striking. Given the shared colonial heritage, the parallel structure of the two constitutions, and the fact that many Bangladeshi jurists received their legal education in Indian law schools or studied Indian constitutional materials extensively, it is not surprising that the Supreme Court of Bangladesh frequently cites and applies principles developed by the Indian Supreme Court. The doctrine of basic structure, the principle of proportionality in fundamental rights adjudication, the concept of procedural fairness in administrative law, and numerous other doctrines have been adopted from Indian constitutional jurisprudence.

However, this influence has sometimes been uncritical. There are important differences between the Indian and Bangladeshi constitutional contexts, including the different histories of the two countries, the different character of their federal and unitary structures, and the different emphases in their constitutional texts. A sophisticated constitutional jurisprudence for Bangladesh requires not merely borrowing from Indian precedent but critically engaging with it, identifying where it is applicable and where the Bangladeshi context requires a different approach. This kind of critical comparative constitutional work is one of the things that a strong tradition of constitutional scholarship, which Bangladesh currently lacks in adequate quantity, would make possible.

Section 6.2: Legislation - The Primary Instrument of Legal Change

Parliamentary legislation is the primary instrument of legal change in Bangladesh. The Jatiya Sangsad has the power to legislate on any subject under the Constitution, and its legislation, once enacted, prevails over all other sources of law except the Constitution itself. The body of statutory law in Bangladesh is vast and covers virtually every aspect of commercial, social, and personal life.

Much of this statutory body, as we have noted, consists of colonial-era legislation: the Penal Code, the Evidence Act, the Contract Act, the Companies Act, the Registration Act, and many

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others. These colonial statutes have been supplemented by post-independence legislation addressing new areas of social and economic life, from labor law to environmental law, from telecommunications regulation to the recent digital security legislation. But the colonial core of the statute book remains, often unreformed and sometimes poorly adapted to contemporary conditions.

The quality of legislative drafting in Bangladesh is an important but underappreciated issue. Good legislation must be clear, coherent, internally consistent, and consistent with the broader body of law. Poor legislation, which is ambiguous, internally inconsistent, or conflicts with other statutes or constitutional provisions, creates unnecessary litigation, produces unjust outcomes, and undermines the rule of law. The quality of legislative drafting in Bangladesh has been criticized by legal scholars and practitioners. The Law Commission of Bangladesh, which is mandated to review existing legislation and recommend reforms, has produced numerous reports over the years, but the implementation of its recommendations has been disappointingly slow.

The delegated legislation produced by government ministries and regulatory agencies adds a further layer of complexity to the statutory framework. Statutory instruments, rules, regulations, and orders made under powers delegated by Parliament are numerically much more significant than primary legislation, and their quality and consistency are even more variable. The absence of comprehensive, publicly accessible repositories of delegated legislation makes it difficult for practitioners and the public to identify and comply with their legal obligations, a problem that the digitalization of legal resources has begun to address but has not yet fully resolved.

Section 6.3: Common Law and Precedent

Bangladesh is a common law country, and judicial decisions, particularly decisions of the Appellate Division and the High Court Division of the Supreme Court, constitute binding precedent for the courts below in the common law sense. The doctrine of stare decisis, the obligation to follow precedent, is formally accepted in the Bangladeshi legal system, and the Supreme Court's decisions are authoritative statements of the law on the questions they address.

The practical operation of the doctrine of precedent in Bangladesh raises several interesting issues. The volume of reported decisions from the Appellate Division and the High Court Division is large, and the accessibility of these decisions has been limited by the inadequacy of legal reporting and the absence (until relatively recently) of comprehensive electronic databases of Bangladeshi case law. The Bangladesh Law Chronicle (BLC) and the Dhaka Law Reports (DLR) have been the principal reporting services, but they have not provided complete coverage of Supreme Court decisions, and decisions of the subordinate courts have been very poorly documented and reported.

The quality of reasoning in Bangladeshi judicial decisions is another important consideration. Good precedent requires not merely that a decision be made but that it be accompanied by reasoning that is clear enough to guide future decision-making in similar cases. Poorly reasoned decisions, which announce conclusions without explaining the principles on which those conclusions rest, are poor precedents because they provide inadequate guidance to subsequent courts. There is a general perception among Bangladeshi legal scholars and practitioners that the

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quality of judicial reasoning in many reported decisions is insufficiently rigorous, and that this inadequacy in reasoning quality reduces the value of the precedent system as a mechanism for developing coherent and predictable law.

The use of foreign precedents in Bangladeshi courts is extensive, as we have noted. English cases decided before 1971, which represent the main body of colonial-era common law, technically ceased to be binding precedents in Bangladesh after independence, but they continue to be cited with great frequency and treated as highly persuasive authority. Indian Supreme Court decisions are similarly cited extensively. This extensive use of foreign authority reflects both the common law tradition and the relative scarcity of authoritative Bangladeshi precedent in some areas of law. But it also carries risks: foreign precedents reflect the social, economic, and constitutional contexts of their own jurisdictions, and applying them uncritically to the Bangladeshi context can produce distorted outcomes.

Section 6.4: Personal Law, Customary Law, and the Pluralist Reality

As we noted in Chapter One, Bangladesh operates a system of legal pluralism in which different laws apply to different population groups in matters of personal status and family relations. Muslim personal law, governed primarily by the Muslim Family Laws Ordinance 1961 (which applies in Bangladesh as well as Pakistan, since it was enacted before the liberation war), governs marriage, divorce, maintenance, and succession for Muslim citizens. Hindu personal law, governed by the traditional Dharmashastra rules as received into the colonial legal system, governs family matters for Hindu citizens, though with significant modifications introduced by legislation including the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946. Christian personal law is governed by the Christian Marriage Act 1872 and other legislation.

This system of personal law pluralism is a source of significant complexity and, in some respects, of injustice. The treatment of women under traditional personal law regimes has been a major concern for advocates of gender equality. Muslim women in Bangladesh have the formal protection of the Muslim Family Laws Ordinance 1961, which requires registration of marriages and divorces, limits polygamy, and provides some protection for women's rights in family matters. But the enforcement of these protections is inadequate, and customary practices that disadvantage women continue to operate alongside the formal legal regime. Hindu women in Bangladesh face particular disadvantages in inheritance law, since Hindu personal law as applied in Bangladesh does not generally grant daughters equal inheritance rights with sons, and there has been no legislative reform of Hindu personal law in Bangladesh comparable to the Hindu Succession Act 1956 in India.

The Chittagong Hill Tracts represent a further dimension of legal pluralism in Bangladesh. The indigenous peoples of the Hill Tracts, collectively comprising numerous ethnic groups including the Chakma, Marma, Tripura, and others, have customary legal systems that govern land tenure, family relations, and dispute resolution within their communities. The Chittagong Hill Tracts Peace Accord of 1997, which ended a decades-long armed insurgency by the Parbatya Chattagram Jana Sanghati Samiti, included provisions for the recognition of customary land rights and the establishment of Hill District Councils with some legislative powers over

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customary law matters. The implementation of the Accord has been slow and incomplete, and the legal status of customary rights in the Hill Tracts remains contested.

The shalish, the indigenous village-level dispute resolution system that operates throughout rural Bangladesh, is the most practically significant form of informal law in the country. Shalish involves the convening of an informal meeting of community members, typically headed by local notables (matbars or shalishkars), to hear and resolve disputes. It is cheap, accessible, informal, and fast, in contrast to the formal court system which is expensive, inaccessible, formal, and slow. Studies have consistently found that the majority of rural Bangladeshis prefer to resolve their disputes through shalish rather than through the formal courts.

But shalish also has serious problems. It tends to reinforce existing power hierarchies within communities, which means that it often disadvantages women, the poor, and members of minority communities. Outcomes of shalish proceedings are not legally binding in the formal sense, though social pressure may make them practically binding. The standards applied in shalish proceedings are not uniform and are not subject to any systematic oversight or appellate review. Shalish can and sometimes does produce outcomes that are unjust by the standards of formal law, including outcomes that are discriminatory against women.

The relationship between shalish and the formal legal system is complex. The formal courts do not recognize shalish outcomes as legally binding, but they also make no systematic effort to supersede shalish in its domains of operation. Legal aid organizations working in rural Bangladesh often seek to support reformed shalish, providing legal knowledge and guidance to shalish proceedings to make them more consistent with formal law while maintaining the accessibility and informality that makes shalish valuable to its users. This is a pragmatic and sophisticated approach to legal pluralism that recognizes both the value and the limitations of informal dispute resolution.

CHAPTER SEVEN: THE BANGLADESH BAR COUNCIL - HISTORICAL, STRUCTURAL, AND PHILOSOPHICAL ANALYSIS

Section 7.1: The Historical Origins of Professional Legal Regulation in Bengal

The regulation of the legal profession has a long history in the territories that now constitute Bangladesh, beginning with the colonial period and continuing through the Pakistan era to the independent state of Bangladesh. Understanding this history is essential for understanding the current structure of the Bangladesh Bar Council and the arguments for reforming it.

The earliest formal regulation of legal practitioners in Bengal was introduced through the Legal Practitioners Act of 1879, which we mentioned in Chapter Two. This Act established requirements for enrollment of legal practitioners and created a distinction between advocates (who could practice before the High Court) and pleaders (who could practice before the lower courts). The regulation was administered by the High Court, which had the power to enroll practitioners and to discipline them for professional misconduct.

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The India Bar Councils Act of 1926 marked a significant step in the self-governance of the legal profession. The Act established Bar Councils at the High Court level, composed of elected representatives of the bar, with powers to make rules for the professional conduct of advocates and to exercise disciplinary functions. This was an important recognition of the principle of professional self-regulation: the legal profession should govern its own members according to professional standards, rather than being entirely subject to external state regulation. The establishment of elected bar councils represented the professional's assertion of the right to self-governance, analogous to the self-governance exercised by other professions such as medicine and accountancy.

Under the Pakistan period, the Advocates Act 1961 replaced the earlier Indian legislation and established a new framework for legal professional regulation across Pakistan. The Act created the Pakistan Bar Council and provincial bar councils, with powers of enrollment, regulation, and discipline of advocates. The enrollment examination system, which requires candidates to demonstrate a minimum standard of legal knowledge before being enrolled as advocates, dates from this period, though the specific examination format has changed over time.

After the liberation of Bangladesh in 1971, the new government moved quickly to establish an independent regulatory framework for the legal profession. The Bangladesh Legal Practitioners and Bar Council Order 1972 (President's Order No. 46 of 1972) created the Bangladesh Bar Council as the regulatory body for the legal profession in Bangladesh. This Order, which remains the fundamental legislative instrument governing the Bar Council, was issued as a Presidential Order rather than an Act of Parliament because the Constitution had not yet been adopted at the time of its issuance. It has been modified by subsequent legislation but its basic structure remains intact.

Section 7.2: The Structure and Constitution of the Bangladesh Bar Council

The Bangladesh Bar Council, as constituted under the Bangladesh Legal Practitioners and Bar Council Order 1972, is a statutory body with functions of regulation, enrollment, discipline, and representation of the legal profession in Bangladesh. Its structure and composition deserve careful examination, because the governance structure of the Bar Council significantly influences its effectiveness in discharging its regulatory functions.

The Bar Council consists of fifteen members. The Attorney-General for Bangladesh is a member and Chairman ex officio. The other fourteen members are elected by advocates from among themselves for a term of three years. Of these fourteen elected members, seven are from general seats (elected by the national electorate of advocates) and seven are from seven zonal or group seats (each elected by advocates in a particular geographical zone). The elected members, in their first meeting after each election, elect from among themselves a Vice-Chairman and constitute the various standing committees of the Council.

The most important committee for present purposes is the Enrollment Committee, which is responsible for the examination and enrollment of new advocates. The Enrollment Committee has a distinctive composition that sets it apart from other Bar Council committees. It consists of five members: a Chairman nominated by the Chief Justice from among the judges of the

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Appellate Division, two members nominated by the Chief Justice from among the judges of the High Court Division, the Attorney-General ex officio, and one member elected by the Bar Council from among its own members. This composition, which gives judicial nominees a majority on the Committee responsible for professional enrollment, reflects a deliberate policy choice about the relationship between the judiciary and the profession in the process of professional qualification.

The philosophical justification for this composition is that the judiciary has a strong interest in the quality of the advocates appearing before it, and that judicial participation in the enrollment process helps to ensure that the standards applied are those that the courts require. The alternative view, which has been articulated by advocates of stronger bar autonomy, is that professional self-regulation is better served by giving the profession itself greater control over the enrollment process, and that excessive judicial involvement in enrollment blurs the appropriate boundary between the judiciary and the bar.

The Secretary of the Bar Council is a government-appointed official drawn from the senior judiciary (typically a sitting District Judge or Senior Judicial Officer on deputation). The Secretary serves as the Chief Executive Officer of the Bar Council, managing its day-to-day operations and implementing the decisions of the Council. The appointment of the Secretary by the government, rather than by the Bar Council itself, is an important feature that reflects the mixed character of the Bar Council as both a professional self-regulatory body and a government-linked regulatory institution. Critics of this arrangement argue that government control over the Bar Council's chief executive compromises the independence of the institution.

The Bar Council's disciplinary machinery consists of one or more Tribunals, each consisting of members of the Bar Council, which hear complaints against advocates for professional misconduct. Any court or any person may file a complaint against an advocate, and the Tribunal conducts a quasi-judicial proceeding to determine whether the complaint is substantiated and, if so, what sanction is appropriate. Sanctions range from reprimand to suspension to striking off the roll (disbarment). Appeals from Tribunal decisions lie to the High Court Division of the Supreme Court.

The disciplinary system has been the subject of significant criticism. Complaints against advocates are often resolved slowly, sometimes taking years to be decided, which undermines the deterrent effect of professional discipline. The relationship between members of the Bar Council who sit as disciplinary tribunal members and the advocates who appear before them creates potential conflicts of interest. The criteria for what constitutes professional misconduct are not always clearly defined, creating uncertainty for practitioners and making consistent enforcement difficult. And the cultural solidarity of the bar, the tendency of lawyers to protect each other from external criticism, can make effective self-regulation difficult even when the formal mechanisms exist.

Section 7.3: The Functions of the Bar Council and Their Jurisprudential Basis

The Bangladesh Bar Council performs four principal functions: enrollment (admitting qualified persons to the roll of advocates), regulation (prescribing and enforcing standards of professional

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conduct), discipline (investigating and sanctioning professional misconduct), and representation (advocating for the interests of the legal profession in interactions with the government, the judiciary, and the public). These functions are closely related and collectively constitute the system of professional self-regulation that is the Bar Council's reason for existence.

The philosophical justification for professional self-regulation, as articulated by sociologists of the professions like Talcott Parsons and Eliot Freidson, rests on several related claims. First, the specialized knowledge possessed by professionals (lawyers, doctors, engineers) cannot be adequately evaluated by non-professionals, so that quality control by the profession itself is more reliable than quality control by external, non-specialist bodies. Second, professional ethics require a degree of independence from market pressures and client preferences that can only be maintained if the profession collectively enforces ethical standards. Third, the public interest is best served when the profession takes responsibility for its own quality and integrity, because this responsibility creates incentives for high standards that external regulation may not create as effectively.

These arguments are broadly persuasive, but they have important limitations that are particularly visible in the Bangladeshi context. The claim that the profession can effectively evaluate its own members' quality is weakened when the professional culture of the bar is characterized by solidarity that resists criticism and by political dynamics that can undermine merit-based evaluation. The claim that professional ethics require independence from market pressures is weakened when the economics of legal practice in Bangladesh create severe pressures on new advocates that can compromise ethical standards. And the claim that the profession's self-interest aligns with the public interest is weakened when the profession, through its control of entry into the profession and its resistance to competition, can use self-regulation primarily as a mechanism for protecting the economic interests of established practitioners at the expense of clients and of qualified candidates seeking to enter the profession.

The enrollment function of the Bar Council is the one that has attracted the most controversy and that will occupy the most space in this textbook's discussion of reform. The basic rationale for requiring a qualifying examination before entry into the legal profession is clear and defensible: the practice of law affects the life, liberty, property, and rights of clients, and unqualified practitioners can cause enormous harm. The state and the profession have a legitimate interest in ensuring that all practitioners have a minimum level of competence. This rationale supports the existence of some form of qualifying examination.

But the specific form that the qualifying examination takes, what it tests, how it tests it, who administers it, and how transparent and fair the administration is, are all matters of legitimate debate and potential criticism. The current Bar Council enrollment examination in Bangladesh, consisting of an MCQ preliminary examination followed by a written examination and a viva voce examination, has been extensively criticized on multiple grounds that we will examine in the following chapter.

Section 7.4: The Bar Council Election System and Its Political Dynamics

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The election of Bar Council members by practicing advocates is the democratic foundation of professional self-governance. The principle that the regulatory body governing a profession should be controlled by elected representatives of that profession, rather than by government appointees or other external authorities, is a cornerstone of the model of professional self-regulation. But the specific mechanics of Bar Council elections in Bangladesh have produced results that have not always served the regulatory mission of the Council.

Bar Council elections in Bangladesh are intensely political events. Candidates campaign vigorously for elected seats, and the elections are organized along lines that reflect the broader political divisions of Bangladeshi society. The major political parties, particularly the Awami League and the Bangladesh Nationalist Party, have typically supported slates of lawyer-candidates in Bar Council elections, and the results of Bar Council elections have tended to mirror the outcomes of national elections. When the Awami League controls the government, its affiliated lawyers tend to dominate the Bar Council, and vice versa.

This political polarization of the Bar Council has significant consequences for its regulatory effectiveness. When the Council is controlled by one political faction, its decisions on enrollment, discipline, and professional regulation can be influenced by political considerations rather than purely professional ones. The perception, widely shared among Bangladeshi lawyers and legal scholars, that Bar Council membership and Bar Council decisions are influenced by political affiliation rather than professional merit is deeply damaging to the institution's credibility as a regulatory body.

The geographical structure of Bar Council elections, with seven seats allocated to geographic zones, was designed to ensure that the Council represents the bar throughout the country and not just in Dhaka. This is a reasonable objective, but the practical effect has been to create a system in which zonal representatives may have parochial interests that conflict with the national regulatory mission of the Council. The governance of the legal profession in Bangladesh requires attention to national standards and national interests, and a regulatory structure that is fragmented along regional political lines is not well suited to this task.

The relationship between the Bar Council and the district bar associations adds another layer of complexity. District bar associations are separate organizations from the Bar Council, governed by their own elected leaderships, and their relationship with the Bar Council is sometimes characterized by tensions over jurisdiction, authority, and the allocation of resources. The district bar associations are important institutions: they provide the immediate professional community for most advocates in Bangladesh, they organize the professional life of the bar in each district, and they exercise significant informal influence over the practice of law in their districts. Understanding the Bar Council's regulatory function requires understanding its relationship with these more local institutions.

Section 7.5: The Legal Education and Training Institute and the Bar Vocational Course

The Bangladesh Bar Council Order 1972 empowers the Bar Council to establish educational institutions for legal training. Pursuant to this power, the Bar Council established the Legal Education and Training Institute (LETI) to provide professional legal training to aspiring

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advocates. LETI was designed to offer a Bar Vocational Course (BVC), a professionally-oriented practical training program intended to bridge the gap between academic legal education and the requirements of practice.

The BVC, when it was operational, represented an important philosophical commitment: the recognition that a degree from a law school, however well-designed, does not by itself adequately prepare a person for the demands of legal practice. Legal practice requires skills, advocacy, drafting, client interviewing, negotiation, and courtroom procedure, that can only be adequately developed through practical instruction and supervised practice. The BVC was designed to provide this practical dimension of professional preparation.

However, as noted in commentary published in The Daily Star in 2017, LETI has not consistently operated the BVC, and at times the Bar Vocational Course has not been available to aspiring advocates. This is a significant failure of the Bar Council's educational function. When the BVC is not available, the gap between academic legal education and professional practice is unfilled, and newly enrolled advocates enter practice without adequate preparation for the practical demands of their profession. This gap contributes directly to the quality problems of the legal profession that have been identified by numerous critics.

The revival and strengthening of LETI and the BVC is one of the reform proposals that enjoys broad support across the spectrum of opinion on Bangladeshi legal education. The details of how a revived BVC should be structured, what it should cover, how long it should last, and how it should be assessed, are questions that require careful thought and will be addressed in later chapters of this textbook.

CHAPTER EIGHT: THE ENROLLMENT EXAMINATION SYSTEM - CONTROVERSIES, CRITIQUE, AND THE CASE FOR REFORM

Section 8.1: The Current Examination System - Structure and Process

The enrollment examination administered by the Bangladesh Bar Council is the gateway through which all candidates must pass before being admitted to the roll of advocates. Understanding the structure and process of this examination is essential for evaluating the arguments for and against its reform, including the arguments for its abolition.

The examination currently consists of three stages. The first stage is a Multiple Choice Question (MCQ) examination, conducted once a year, which tests basic knowledge of law across a broad range of subjects. Candidates who pass the MCQ examination are eligible to sit for the second stage, which is a written examination requiring more extended answers to legal questions. Candidates who pass the written examination are then called for the third stage, the viva voce examination conducted by the Enrollment Committee.

The MCQ examination was introduced as a preliminary filter to reduce the number of candidates proceeding to the more resource-intensive written examination. Given the very large number of

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candidates sitting for the enrollment examination each year (a consequence of the large number of law graduates produced annually by the numerous public and private university law programs), some form of preliminary filtering is necessary for practical reasons. In 2025, for example, the MCQ examination was conducted in April, with the written examination following in June and results published in October. The process thus takes most of a calendar year from start to finish.

The written examination is the substantive core of the enrollment process. It tests candidates' ability to apply legal knowledge to factual scenarios, to identify relevant legal issues, and to construct coherent legal arguments. The quality of the written examination, including the sophistication of the questions, the clarity of the marking criteria, and the consistency of the marking itself, is crucial to whether the examination serves its purpose of distinguishing between candidates who are sufficiently competent to practice law and those who are not.

The viva voce examination, conducted by the Enrollment Committee, involves a personal interview of each candidate by members of the Committee. The viva voce is intended to assess qualities that cannot be adequately tested through written examination, including the candidate's ability to think and speak about the law in real time, her personality and manner, and her understanding of professional responsibility and ethics. In principle, the viva voce is a valuable component of a comprehensive assessment of professional fitness. In practice, it has been the subject of the most serious criticisms of the enrollment process.

Section 8.2: Criticisms of the Enrollment Examination - Transparency, Fairness, and Corruption

The enrollment examination has been the subject of widespread and serious criticism from law students, young advocates, senior practitioners, legal academics, and civil society organizations. These criticisms fall into several categories, and it is important to examine each carefully because they have different implications for reform.

The most serious criticism is of corruption in the administration of the examination. Allegations that enrollment examination results are influenced by political connections, personal relationships, and the payment of bribes have been persistent and widespread. These allegations are difficult to substantiate through formal evidence, because corruption by its nature operates covertly and those who benefit from it have strong incentives not to speak publicly about it. But the persistence and consistency of the allegations, across a long period of time and from a wide range of sources, suggests that they cannot be dismissed. As The Daily Star's November 2024 analysis of the Bar Council noted, there is "widespread mistrust" in the current examination system, and "the Bar examination process is plagued with allegations of corruption and inefficiency."

The viva voce component of the examination is particularly vulnerable to allegations of corruption and bias, because it involves subjective assessments made by a small committee without any formal record of the reasons for individual decisions. A candidate who fails the viva voce has no way of knowing why she failed, no access to any record of the examination, and no meaningful right of appeal against the decision. This opacity is directly inconsistent with the

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principles of administrative fairness and procedural justice that are guaranteed by the Constitution and that the courts enforce in other administrative contexts. If a public authority makes a decision that adversely affects an individual, the principles of natural justice require that the individual be given reasons for the decision and an opportunity to challenge it. The current viva voce process does not comply with these principles.

The concern about corruption in the viva voce is compounded by the composition of the Enrollment Committee. The committee members are high-ranking public officials and judges who have limited time for the viva voce process. When the number of candidates to be examined is large (as it typically is in the current system), the time available for each individual viva is very short, making thorough and fair individual assessment impossible. Reports from candidates suggest that viva voce sessions are often cursory, lasting only a few minutes, which raises serious questions about whether they can genuinely assess the qualities they are supposed to assess.

A second major criticism concerns the transparency of the written examination marking process. The written examination papers are marked by examiners appointed by the Enrollment Committee, but the criteria applied in marking are not publicly disclosed, and candidates who wish to challenge their marks have no clear mechanism for doing so. The Daily Star's 2024 commentary on Bar Council reform called for "a transparent process for reviewing exam papers at a reasonable fee" and for the publication of results on individual profiles. These are minimum requirements of transparency and accountability in any public examination system, and the absence of these features from the current enrollment examination is a serious deficiency.

A third criticism concerns the content of the examination and its relationship to the actual requirements of legal practice. Critics argue that the current examination tests a form of rote legal knowledge, the memorization of statutory provisions and the names of decided cases, that is not a good predictor of competence in legal practice. What actually determines whether an advocate will serve her clients well is a combination of analytical ability, practical judgment, communication skills, and ethical commitment, none of which are adequately assessed by an examination focused on the recall of legal information. A better-designed examination would assess legal reasoning ability, drafting skill, advocacy competence, and professional ethics, in addition to legal knowledge.

Section 8.3: The Case for Abolition of the Enrollment Examination

The most radical reform proposal currently debated in Bangladeshi legal circles is the complete abolition of the Bar Council enrollment examination. This proposal rests on the argument that the enrollment examination, in its current form, does not reliably filter out incompetent or unethical candidates, and that its real effects are to create barriers to entry that protect established practitioners from competition, to impose significant financial burdens on candidates from less affluent backgrounds, and to sustain a system of gatekeeping that is vulnerable to corruption and political influence.

The argument for abolition typically proceeds on the following lines. First, the LLB degree, whether obtained through a four-year undergraduate program or a two-year postgraduate

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program, is itself supposed to be a qualifying credential. If the law faculties are doing their jobs properly, a graduate with an LLB should have demonstrated a minimum level of legal competence. Adding a further examination on top of the degree examination does not add significant quality value if the degree programs themselves are adequate; it merely adds expense, delay, and another opportunity for corruption.

Second, comparable common law jurisdictions have managed without bar examinations analogous to Bangladesh's enrollment examination. In England and Wales, barristers and solicitors qualify through the Bar Professional Training Course and the Legal Practice Course respectively, which are practically oriented professional training courses. There is no separate bar examination in the Bangladeshi sense; the professional training courses themselves constitute the qualification requirement. In India, the Bar Council of India has an AIBE (All India Bar Examination) for enrollment, but its administration has been widely criticized and its effectiveness is contested.

Third, the enrollment examination does not address the root cause of the quality problems in the legal profession, which is inadequate legal education at the university level. If graduates are emerging from law programs without adequate legal knowledge, the solution is to improve the law programs, not to add a further examination that tests the same inadequately-acquired knowledge.

These arguments are substantive and deserve serious consideration. However, the case for complete abolition also has weaknesses that must be acknowledged. If the LLB degree programs in Bangladesh were uniformly producing graduates of adequate quality, the argument for abolition would be very strong. But the reality, as we will discuss extensively in Chapter Nine, is that the quality of legal education in Bangladesh varies enormously, from genuinely excellent programs at the leading public and private university law faculties to programs at numerous smaller institutions whose graduates lack basic legal knowledge. In this context, some form of quality control at the point of entry into practice is arguably necessary, even if the current examination system needs radical reform.

The better argument is not for the complete abolition of any qualifying assessment but for a fundamental transformation of the system. The current examination should be replaced by a practically-oriented professional assessment that tests the skills actually required for practice, administered in a manner that is transparent, fair, and free from political influence. This could take the form of a Bar Vocational Course assessment (as in England and Wales), a structured practical competence assessment administered by an independent examining body, or some combination of academic and practical assessment. The important thing is that the assessment should be a genuine quality control mechanism rather than a bureaucratic gate-keeping exercise that serves primarily to delay and financially burden candidates.

Section 8.4: The Jurisprudential Analysis of Professional Entry Requirements

The regulation of professional entry, including bar examinations, can be analyzed from the perspective of several jurisprudential traditions. From a natural law perspective, the state has a duty to protect citizens from harm, and harm caused by incompetent legal practitioners is real

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and serious. This duty justifies the imposition of minimum competence requirements on those who wish to practice law. From a utilitarian perspective, the optimal level of entry regulation is that which maximizes the net social benefit, balancing the benefits of quality assurance against the costs of restricted entry, increased prices, and reduced access to legal services.

The economic analysis of professional regulation, associated with scholars like George Stigler, Milton Friedman, and more recently Bryan Caplan, takes a skeptical view of professional licensing requirements. Stigler's famous article "The Theory of Economic Regulation" (1971) argued that regulatory agencies tend to be "captured" by the industries they regulate and to serve the interests of regulated industries (including the legal profession) at the expense of the public. On this view, bar examinations are not primarily about quality assurance but about market protection: by controlling the number of new entrants to the profession, the bar council keeps the supply of legal services below what the market would otherwise provide, thereby keeping prices high and incomes of established practitioners above competitive levels.

This economic critique is not entirely persuasive in the Bangladeshi context. The legal profession in Bangladesh is not characterized by artificially high prices and restricted access of the kind that the economic theory of regulatory capture would predict. On the contrary, the income of the vast majority of advocates, particularly those practicing in the subordinate courts outside of Dhaka, is very modest, and access to legal services in rural areas is seriously inadequate despite the large number of enrolled advocates. This suggests that the problem in Bangladesh is not excessive regulation of entry but inadequate quality control, inadequate professional training, and inadequate distribution of legal services geographically.

Ronald Dworkin's work on the nature of professional obligation is also relevant here. Dworkin argued in A Matter of Principle (1985) that lawyers have special professional obligations that arise from their unique position as officers of the court with responsibilities both to their clients and to the administration of justice. These obligations are not merely matters of professional convention; they reflect the lawyer's participation in the collective enterprise of maintaining the rule of law. From this perspective, professional entry requirements are not merely quality controls; they are the gateway to a role that carries serious public responsibilities. The qualifying process should therefore assess not only technical competence but also the ethical commitment that these public responsibilities require.

CHAPTER NINE: LEGAL EDUCATION IN BANGLADESH - THE CURRENT LANDSCAPE AND ITS PROBLEMS

Section 9.1: The Structure of Legal Education - The Two-Tier System

Legal education in Bangladesh operates through a two-tier structure. The first tier consists of the undergraduate LLB (Hons.) programs offered by public and private universities, typically running for four or five years. The second tier consists of the two-year postgraduate LLB (Pass) programs offered to graduates who already hold a bachelor's degree in another subject. This two-tier structure is the direct outcome of the historical development of legal education in

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Bangladesh, tracing back through the Pakistan period to the colonial era, and it has been the subject of significant controversy and judicial scrutiny.

The undergraduate LLB (Hons.) programs are the mainstream pathway into the legal profession for school-leavers who decide to study law. The University of Dhaka's Faculty of Law offers a five-year LLB program that has historically been regarded as the gold standard of legal education in Bangladesh. Graduates of the University of Dhaka law program go on to dominate the Supreme Court bar and the senior ranks of the legal profession. Similarly prestigious programs are offered at Jahangirnagar University, Rajshahi University, Chittagong University, and a number of other public universities.

The private university sector has expanded enormously in the field of legal education since the 1990s. Universities like BRAC University, North South University, East West University, Independent University Bangladesh (IUB), and many others now offer four-year LLB (Hons.) programs. Some of these programs, particularly those at BRAC University, have developed strong reputations for quality and innovation. Others, frankly, have not. The expansion of private university legal education without adequate quality control has been a major problem, and the courts have been called upon to address it.

The landmark cases of Professor Syed Ali Naki and others v Bangladesh and others (High Court Division, 2016) and Bangladesh Bar Council and others v A.K.M. Fazlul Kamir and others (Appellate Division, 2017) directly addressed the quality of private university legal education. The courts issued several important directions, including a directive to shut down two-year LLB (Pass) programs. The courts noted that private university law programs were admitting too many students, relying excessively on part-time faculty, and failing to provide adequate practical legal training. The direction to limit each law school to fifty students per semester reflected a judgment that quality legal education could not be provided to large cohorts without correspondingly large investments in faculty, facilities, and curriculum.

Section 9.2: The Two-Year LLB Program - History, Critique, and the Case for Abolition

The two-year LLB (Pass) program, offered to graduates of other disciplines who wish to enter the legal profession, has been one of the most controversial features of Bangladeshi legal education. The program was designed to allow professionals from other fields, engineers, doctors, accountants, and others, to acquire a legal qualification and enter the legal profession without having to undertake a full four or five-year undergraduate law program. This objective is not unreasonable: professionals with expertise in other fields can make valuable contributions to the legal profession, and the ability to move into law from other disciplines enriches the profession.

However, the two-year LLB program as implemented in Bangladesh has not delivered on this promise. The program has been criticized on multiple grounds. First, two years is simply not long enough to provide adequate grounding in the depth and breadth of law that professional practice requires. The curriculum of a two-year program must be compressed relative to a four-year program, and the compression inevitably means that important subjects are covered too briefly or omitted entirely. Students who enter the program from very different disciplinary

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backgrounds, with no prior legal education, face a particularly steep learning curve that a two-year program cannot adequately support.

Second, many of the students enrolled in the two-year LLB program are not, in fact, professionals from other fields seeking to supplement existing expertise. They are students who were unable to gain admission to undergraduate law programs and who have chosen the two-year route as an alternative. This means that the program is not serving its intended purpose of bringing cross-disciplinary expertise into the legal profession, but rather functioning as a lower-prestige alternative pathway into the profession for students who have not demonstrated the academic qualifications required for undergraduate law admission.

Third, the quality of teaching in many two-year LLB programs has been poor. The programs are offered by a wide range of institutions, including some whose academic standards are very low. The teaching is often conducted by part-time faculty with limited research engagement and limited practical experience. The facilities, libraries, and support resources available to students in many two-year programs are inadequate. The result is that many graduates of two-year LLB programs enter the profession with a very superficial understanding of law, which contributes to the quality problems of the bar that have been widely documented.

The Supreme Court's direction to shut down two-year LLB programs, issued in the 2016-2017 cases, was therefore welcomed by many legal educators and practitioners as a necessary reform. However, complete abolition of the two-year LLB route raises important questions about how to maintain pathways into the legal profession for qualified graduates from other disciplines. The better solution, which we will develop in later chapters, is not to abolish alternative entry routes entirely but to redesign them so that they genuinely serve the purpose of bringing qualified and appropriately trained candidates into the profession. A well-designed two-year LLB program for genuine graduates of other disciplines, with rigorous admissions criteria, high academic standards, and strong practical training components, could be a valuable addition to the legal education landscape. The problem is not the concept but the implementation.

Section 9.3: The Academic Quality Problem - Curriculum, Pedagogy, and Research

The quality of legal education in Bangladesh, even in the better university programs, suffers from several persistent problems that have been documented by legal scholars, by the Law Commission of Bangladesh, and by the courts. These problems are not unique to Bangladesh; they are shared to varying degrees by most South Asian legal education systems, and addressing them requires drawing on international experience while adapting solutions to the specific Bangladeshi context.

The curriculum problem is one of content, balance, and coherence. Most Bangladeshi law programs are heavily focused on doctrinal subjects, the substantive rules of law in various areas, with insufficient attention to the skills, methods, and values of legal practice. Courses in contract, tort, criminal law, constitutional law, and procedure occupy the bulk of the curriculum, while courses in legal research methodology, legal writing and drafting, advocacy skills, client interviewing, negotiation, and alternative dispute resolution are often absent or inadequately resourced. The Law Commission of Bangladesh's 2006 Report on Review of Legal Education in

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Bangladesh, as noted in commentary published in The Daily Star, criticized law schools specifically for "not teaching enough practical skills" and for "failing to fully integrate the learning of analysis with ethical and professional training."

Beyond the skills gap, there is a serious problem with the international and comparative dimensions of legal education in Bangladesh. Bangladeshi law students learn almost nothing about the legal systems of other countries, about the development of international law and its increasing relevance to domestic legal practice, about Islamic legal theory and its relevance to Bangladeshi personal law, or about the emerging fields of international human rights law, international trade law, and international investment law. The curriculum is essentially inward-looking, focused on Bangladeshi domestic law, at a time when Bangladeshi lawyers increasingly need to understand the international dimensions of the legal issues they encounter.

The pedagogy of legal education in Bangladesh is dominated by the lecture method: professors deliver lectures on legal subjects, students take notes, and assessment is by examination. This method has significant limitations as the primary mode of legal education. It produces passive learners rather than active reasoners, it develops memorization rather than analytical ability, and it fails to develop the skills of research, argument, and communication that are essential for legal practice. The Socratic method of teaching, in which the teacher guides students through questioning and dialogue to develop their own analytical capabilities, which has been enormously influential in American law schools and increasingly in other common law jurisdictions, is rarely used in Bangladeshi law schools.

Clinical legal education, in which students represent real clients in real cases under the supervision of qualified practitioners, is one of the most effective methods of developing practical legal skills. Clinics allow students to apply the doctrinal knowledge they have acquired in courses to real problems, to develop empathy for clients, to experience the emotional and practical complexity of legal representation, and to develop professional judgment in a supported environment. Clinical legal education is well-established in the United States, where law school clinics serve millions of low-income clients annually, and is increasingly common in Europe, India, and other parts of the world. In Bangladesh, clinical legal education is only beginning to be developed, with a few universities having established legal aid clinics, but it remains marginal to the mainstream of legal education.

The research culture of Bangladeshi law faculties is underdeveloped. The production of high-quality legal scholarship, published in peer-reviewed journals and contributing to the development of legal theory and doctrine, is an essential function of a healthy law school. Legal scholarship serves not only the intellectual function of developing legal understanding; it also serves a practical function by providing a resource of ideas and analysis that judges, legislators, and practitioners can draw upon in their work. The relative scarcity of high-quality Bangladeshi legal scholarship, and the almost complete absence of internationally published legal scholarship from Bangladeshi law faculties, is a serious weakness in the intellectual infrastructure of the legal system.

The reasons for this research weakness are multiple. Bangladeshi law faculty members face heavy teaching loads that leave little time for research. Research funding for legal scholarship is

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virtually nonexistent. The culture of promotion and tenure in Bangladeshi universities has not historically rewarded research productivity in the way that comparable institutions in other countries do. And the absence of high-quality Bangladeshi law journals creates a limited outlet for whatever research is produced. These structural features of the academic environment create powerful disincentives to research productivity, and addressing them requires systemic changes in the way that law faculties are funded, managed, and evaluated.

Section 9.4: The All Bangladesh Admission Test for LLB - Rationale and Analysis

One of the reform proposals that has been discussed in the context of Bangladeshi legal education is the introduction of an all-Bangladesh admission test for entry into LLB programs, analogous to the admission tests used for medical education and engineering education. The proposal responds to the concern that the existing law school admission processes do not adequately select for the academic ability and potential that a legal education requires, and that the result is that many students enter law school without the intellectual preparation necessary to benefit from it.

The existing admission processes vary among institutions. Public universities typically conduct their own admission tests, while many private universities rely on HSC results alone or conduct minimal testing. The absence of a standardized national test means that there is no common benchmark for evaluating the academic preparedness of admitted students, and that admission standards vary widely among institutions. At some institutions, essentially anyone with an HSC certificate can gain admission to a law program, regardless of their academic performance or intellectual aptitude.

The introduction of an all-Bangladesh admission test would standardize the minimum threshold for entry into legal education across all institutions. Such a test could assess verbal reasoning, analytical reasoning, and basic English proficiency (since legal education is conducted substantially in English), and it could provide a common basis for comparing applicants across different educational backgrounds. The experience of countries that use standardized tests for law school admission, notably the United States (which uses the Law School Admission Test, or LSAT), Australia, and Canada, suggests that standardized tests can be useful tools for identifying candidates with the academic potential to succeed in legal education, though their validity and fairness have also been contested.

The philosophical case for a standardized admission test rests on the argument that access to a professional education should be determined by demonstrated aptitude rather than by social privilege or the accident of institutional affiliation. If admission to law schools is determined by an objective national test, then students from public schools and less advantaged backgrounds have an equal opportunity to demonstrate their ability alongside students from elite private schools. The test provides a common standard that transcends the varying grade inflation and admission practices of different schools and universities.

The counterarguments are also worth taking seriously. Standardized tests tend to correlate with socioeconomic background, because students from more affluent families have greater access to test preparation resources. If a national LLB admission test is introduced, it must be

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accompanied by measures to ensure that students from disadvantaged backgrounds have adequate preparation, or it will simply reproduce existing inequalities through a different mechanism. There is also the question of what the test should measure: if it measures only verbal and analytical reasoning, it may screen out candidates with important practical and interpersonal qualities that are essential for legal practice but not well-measured by standardized tests.

The most philosophically sophisticated approach to LLB admission would combine a national standardized test with other assessment criteria, including academic performance, personal statements, and possibly interviews, in a holistic evaluation process that seeks to identify candidates who are both intellectually capable and personally suited to the profession. This is the approach used by many leading law schools around the world, and it has the virtue of avoiding the reductionism of a single standardized score while providing a common benchmark of basic intellectual aptitude.

CHAPTER TEN: THE TRAINING OF ADVOCATES AND THE PROFESSIONAL DEVELOPMENT SYSTEM

Section 10.1: The Pupillage System and its Adequacy

In the common law tradition, the transition from legal education to legal practice has historically been managed through a system of pupillage or apprenticeship, in which newly qualified lawyers learn the practical skills of their profession through supervised practice under experienced practitioners. The English barrister's pupillage system, which requires all newly called barristers to complete twelve months of supervised practical training before they are authorized to appear in court independently, is the most formalized version of this model in the common law world.

Bangladesh's system of practical training for newly enrolled advocates is far less structured than the English model. The Bangladesh Bar Council Order 1972 requires that newly enrolled advocates complete a period of pupillage under a senior advocate before they can appear independently in court, but the requirements for this pupillage are not sufficiently detailed or enforced. As The Daily Star's November 2024 analysis noted, the Bar Council's rules require senior advocates to mentor junior advocates and provide reasonable stipends, but compliance with these requirements is inadequate and monitoring is minimal.

The practical result is that many newly enrolled advocates receive inadequate practical training. They attach themselves to senior advocates' chambers as juniors, running errands, drafting routine documents, and occasionally assisting in court, but they may go for months or years without receiving any systematic instruction in the skills of legal practice. The quality of the training they receive depends almost entirely on the willingness and ability of the senior advocate to whom they are attached to invest time and effort in their professional development. Some senior advocates take their mentoring responsibilities seriously and provide genuinely valuable training. Many do not.

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The financial situation of junior advocates exacerbates this problem. New entrants to the legal profession in Bangladesh typically earn very little for several years after enrollment. The "briefless barrister" of Victorian English fiction has its Bangladeshi equivalent in the junior advocate who spends years in a senior's chamber without adequate remuneration. The financial pressure on junior advocates can force them to take shortcuts, to cut ethical corners, or to leave the profession entirely, none of which serves the public interest. The Daily Star's 2024 analysis called for the Bar Council to introduce "conditional grants or interest-free loans" for the purchase of essential legal texts and professional equipment for young advocates, and for senior advocates' mentoring obligations to include "reasonable stipends" that could be made tax-deductible to incentivize compliance.

Section 10.2: Continuing Professional Development - The Missing Framework

Continuing professional development (CPD) for practicing advocates is essentially absent from the current Bangladeshi system. Once enrolled as an advocate, a Bangladeshi lawyer faces no formal requirement to update her legal knowledge, develop new skills, or maintain competence in areas of law that are evolving. This is a serious deficiency that distinguishes Bangladesh from most developed legal systems.

The rationale for mandatory CPD is simple and compelling: law changes continuously, new legislation is enacted, courts develop new doctrines, and new areas of legal practice emerge in response to changing social and economic conditions. A lawyer who qualified twenty years ago and has not kept her knowledge current may be providing advice based on legal understandings that are no longer accurate. The harm this can cause to clients, who rely on their lawyers for accurate and current legal advice, is real and serious.

Mandatory CPD requirements are standard features of legal professional regulation in most advanced jurisdictions. England and Wales require solicitors to complete 16 hours of CPD per year and barristers to complete 45 hours. Australia, Canada, and the United States all have mandatory CPD requirements for lawyers. The International Bar Association has adopted guidelines on CPD for legal professionals that set out principles for effective CPD programs. Bangladesh has no equivalent mandatory CPD framework, and the Bar Council has not developed one.

Introducing a mandatory CPD framework for Bangladeshi advocates would require significant institutional development. The Bar Council would need to establish or accredit CPD providers, define the categories of CPD activity that count toward the requirement, set minimum annual requirements, and establish mechanisms for monitoring compliance and sanctioning non-compliance. This is not a trivial undertaking, but it is entirely feasible given adequate institutional capacity and political will. The development of a robust CPD framework would significantly improve the quality and currency of legal knowledge in the Bangladeshi bar, which would translate directly into better service for clients and better outcomes in the justice system.

Section 10.3: Specialization and the Development of a Specialized Bar

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One of the most significant structural changes that the Bangladeshi legal profession needs is the development of genuine specialization, where groups of lawyers develop deep expertise in particular areas of law, rather than the current model in which most advocates profess to handle any kind of legal work.

The generalist model of legal practice made sense in a simpler legal era, when the body of law was smaller, cases were less complex, and the technical demands of practice in any area were manageable by a reasonably competent generalist. That era has passed. Modern law is enormously complex and highly differentiated. The practice of corporate law, with its complex financial transactions, its securities regulations, and its international dimensions, requires a kind of specialized knowledge that is very different from what is required for criminal defense practice, family law, or environmental law. A lawyer who attempts to practice in all of these areas without adequate specialization in any of them will inevitably provide inferior service in all of them.

The recognition of specialization by the Bar Council would serve several purposes. First, it would incentivize the development of genuine expertise by creating reputational and marketing advantages for specialists. If the Bar Council endorses particular advocates as specialists in specific areas of law, this endorsement provides valuable information to potential clients, who can identify practitioners with proven expertise in the areas most relevant to their needs. Second, specialization would promote the development of specialized continuing education programs, legal publications, and professional associations in particular areas of law, all of which would contribute to the overall development of legal knowledge and practice. Third, specialization would help to differentiate the market for legal services in Bangladesh, which is currently characterized by too much undifferentiated competition at the bottom of the market and too little quality differentiation at the top.

The introduction of specialization by the Bar Council would require the development of criteria for recognizing specialists, procedures for assessing compliance with those criteria, and mechanisms for revoking specialist status when standards are not maintained. Various models are available for reference: the English solicitor specialism framework, the American system of board certification in various legal specialties, and the Canadian law society specialization programs all offer useful precedents. The particular system best suited to Bangladesh would need to be designed with careful attention to the specific conditions of the Bangladeshi market for legal services.

CHAPTER ELEVEN: THE PROFESSIONAL DOCTORAL PROGRAM IN LAW AND THE DEVELOPMENT OF BANGLADESHI LEGAL SCHOLARSHIP

Section 11.1: The Current State of Legal Scholarship in Bangladesh

The state of legal scholarship in Bangladesh reflects the broader weaknesses of the country's academic legal culture. While there are individual legal scholars of genuine quality and distinction, and while some excellent legal scholarship has been produced by Bangladeshi

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scholars working within Bangladesh and abroad, the overall volume and quality of legal scholarship produced within the country is significantly below what a nation of Bangladesh's size, its legal tradition, and its intellectual ambitions requires.

The deficiency in legal scholarship has several dimensions. First, there is a shortage of sustained, original doctrinal scholarship that maps and analyzes the existing body of Bangladeshi law in sufficient depth to provide reliable guidance for practitioners and courts. Much of what exists is either outdated (based on colonial-era texts that have been superseded by subsequent legislation and case law) or too brief (law review articles that survey a subject but do not analyze it in sufficient depth). There is virtually no Bangladeshi equivalent of the great common law treatises, such as Chitty on Contracts or Clerk and Lindsell on Torts in England, that provide systematic, authoritative, and regularly updated analyses of the major areas of law.

Second, there is a shortage of critical legal scholarship that examines the Bangladeshi legal system from the perspectives of legal philosophy, legal history, sociology of law, and comparative law. The kind of work that scholars like Upendra Baxi have done for India, producing a sustained critical analysis of the legal system and its relationship to justice, equality, and democratic governance, has not been done for Bangladesh at the same level of depth and ambition. Without this critical literature, reform debates lack the intellectual foundations they need to be productive.

Third, there is almost no internationally visible Bangladeshi legal scholarship. Bangladeshi legal scholars rarely publish in the leading international law journals, rarely participate in international legal academic conferences, and rarely engage with the global debates in their fields. This international invisibility means that Bangladesh is not contributing to the global development of legal thought, and it means that the global legal academy does not have adequate knowledge of and engagement with the Bangladeshi legal system and the issues it raises.

Section 11.2: The Case for a Professional Doctoral Program in Law

The Doctor of Juridical Science (S.J.D.) or Doctor of Laws (LL.D.) professional doctoral program in law, offered by many leading law schools in common law countries, represents a different model from the standard PhD in Law. While the PhD is primarily an academic qualification designed for those who wish to pursue academic careers, the professional doctoral program in law is designed for experienced practitioners who wish to engage in advanced research on legal problems of direct practical relevance.

The introduction of a professional doctoral program in law in Bangladesh would serve multiple purposes. First, it would provide an advanced qualification for senior Bangladeshi legal practitioners who wish to develop research expertise and contribute to the development of legal scholarship while remaining engaged in practice. Second, it would help to build the research culture of Bangladeshi law faculties by creating a critical mass of research-active scholars with advanced research training. Third, it would provide a recognized credential for senior practitioners who wish to move into academic life, helping to address the chronic shortage of research-active law faculty members in Bangladesh.

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A professional doctoral program in Bangladeshi law would ideally focus on problems of direct relevance to the Bangladeshi legal system and society: the reform of specific areas of law, the analysis of constitutional development, the study of the legal dimensions of development and social change, the investigation of access to justice issues, and the comparative study of Bangladeshi law in its South Asian and global context. The research produced through such a program would directly contribute to the body of scholarship needed to support informed legal reform and improve the quality of legal decision-making.

Several models are available for reference. The S.J.D. program at Harvard Law School, which is the oldest and most distinguished of its kind, involves coursework, a substantial dissertation, and residence requirements that ensure sustained engagement with the academic community. The professional doctorate in law offered by several Australian law schools follows a similar model. The specific design of a Bangladeshi professional doctoral program would need to reflect the specific needs and constraints of the Bangladeshi legal education system, but the essential elements, advanced coursework, supervised research, and a substantial written thesis, are well-established.

CHAPTER TWELVE: JURISPRUDENTIAL AND PHILOSOPHICAL DIMENSIONS OF LEGAL REFORM IN BANGLADESH

Section 12.1: The Theory of Legal Change and Institutional Reform

The reform of legal institutions, including the Bangladesh Bar Council and the legal education system, is not merely a technical matter of adjusting rules and procedures. It is a political, philosophical, and sociological process that requires understanding the forces that sustain existing institutions, the forces that drive institutional change, and the conditions under which reform proposals are likely to succeed.

The sociology of institutional change has been analyzed by numerous scholars. Robert Putnam's analysis of institutional performance in Making Democracy Work (1993), based on an empirical study of Italian regional governments, found that the quality of institutional performance was strongly correlated with the stock of "social capital" in the society, the norms of trust, reciprocity, and civic engagement that enable collective action. Societies with high social capital can maintain effective institutions relatively easily; societies with low social capital find institutional maintenance and reform very difficult.

Douglass North's institutional economics, developed in Institutions, Institutional Change and Economic Performance (1990), distinguishes between formal institutions (rules, laws, constitutions) and informal institutions (norms, conventions, codes of conduct). North argues that institutional change is typically path-dependent: existing institutions create vested interests and cultural expectations that make change difficult, and new formal rules are often subverted by existing informal institutions. The implications for legal reform in Bangladesh are significant: even if the formal rules governing the Bar Council and legal education are changed, the informal

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cultures of the legal profession, the traditions of political influence, the habits of patronage and solidarity, will continue to shape the actual operation of the reformed institutions.

Jürgen Habermas, the German philosopher and sociologist, provides yet another perspective on legal reform in his monumental work Between Facts and Norms (1996). Habermas argues that legitimate law must be produced through a process of democratic deliberation, in which all affected parties have an opportunity to participate in the formulation of the rules that will govern them. On this view, the legitimacy of legal reform depends not only on its content but on the process through which it is decided. Legal reforms imposed without adequate consultation, without genuine engagement with the views of affected parties including law students, junior advocates, senior practitioners, law faculty members, clients, and civil society, are less likely to be accepted as legitimate and therefore less likely to be effectively implemented.

The Habermasian perspective suggests that the process of legal reform in Bangladesh, including the reform of the Bar Council and legal education, needs to be more deliberative and inclusive than has typically been the case. Reform proposals that emerge from top-down expert deliberation, without adequate engagement with the full range of stakeholders, are likely to face resistance and may fail to capture important practical considerations that only those with direct experience of the system fully understand. A genuine reform process would involve sustained consultation with law students at various stages of their education, newly enrolled advocates, experienced practitioners, law faculty members, members of the judiciary, clients of the legal system, and civil society organizations with relevant expertise.

Section 12.2: The Political Economy of Legal Reform

Understanding why legal reform in Bangladesh has been so difficult and so slow requires attention to the political economy of the legal system. The legal profession, as we have noted, has historically been politically influential in Bangladesh, and this political influence has been both an asset and a liability for reform.

The asset side of the legal profession's political influence is that lawyers, as an educated and articulate professional group with strong organizational capacity and significant public standing, can be powerful advocates for legal reform. The legal profession in many countries has been a driving force for democratic reform, constitutional development, and the protection of fundamental rights. Some of the most important moments of democratic resistance in Bangladeshi history have involved lawyers, including the "black coat movement" in which Bangladeshi lawyers played an important role in resisting military rule.

The liability side is that the legal profession's political influence can be used to protect the interests of established practitioners against reforms that would benefit the public or aspiring entrants to the profession. Restrictions on entry into the profession, resistance to quality control mechanisms that might challenge existing practitioners, and opposition to competition that might reduce the incomes of established practitioners are all examples of professional interest group behavior that legal reform proposals must navigate.

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The existing political polarization of the Bar Council, discussed in Chapter Seven, is a particular obstacle to reform. When the Bar Council is controlled by one political faction, reform proposals that are supported by the opposing faction are likely to be resisted regardless of their merits. The development of a genuinely non-partisan, professionally-focused approach to Bar Council governance, in which the regulatory mission of the institution takes precedence over political considerations, is a precondition for effective reform.

The role of the government in legal reform is complex. The government has the constitutional authority to legislate on matters relating to the legal profession and legal education, and it has done so on numerous occasions. But the government's interest in legal reform is not always aligned with the public interest: governments may prefer a legal profession that is politically compliant, a judiciary that is dependent on executive patronage, and a system of legal education that produces practitioners who are technically competent enough to serve commercial interests but not sufficiently well-trained to effectively challenge governmental authority. A genuinely reformist government would seek to strengthen the independence of the Bar Council, improve the quality of legal education, and enhance the capacity of the legal system to hold the government itself to account. Not all governments have been willing to pursue reforms that might make their own accountability more robust.

Section 12.3: International Standards and Global Trends in Legal Education and Professional Regulation

The reform of the Bangladeshi legal system does not occur in a vacuum. It takes place against the background of a global conversation about legal education and professional regulation that has produced significant innovations and identified best practices from which Bangladesh can learn.

The International Bar Association (IBA), the Interrights project on legal education reform in developing countries, the work of the Carnegie Foundation for the Advancement of Teaching (particularly its landmark report Educating Lawyers: Preparation for the Profession of Law, published in 2007 and commonly known as the Carnegie Report), and the work of various Commonwealth Law Association bodies have all contributed to an emerging global consensus about what constitutes good legal education and effective professional regulation.

The Carnegie Report identified three fundamental dimensions of professional formation that legal education must address: the teaching of legal doctrine and analysis (the intellectual dimension), the teaching of professional skills and practical judgment (the practical dimension), and the teaching of professional identity and ethical values (the ethical dimension). The Report criticized American law schools for over-emphasizing the first dimension at the expense of the second and third, and its recommendations for a more integrated approach to legal education that addresses all three dimensions have been enormously influential in discussions of law school reform worldwide.

The IBA's work on professional standards, particularly the IBA Standards for the Establishment and Regulation of Legal Education, published in 2021 as part of the IBA's Lawyer Regulation project, provides a comprehensive framework for evaluating the quality of legal education and

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professional regulation systems. These standards address the qualifications of law faculty, the content of legal education curricula, the practical training requirements for new lawyers, the governance of professional regulatory bodies, and the mechanisms for ensuring accountability and transparency in professional discipline. Bangladesh's legal education and professional regulation system falls short of these standards in many respects, and the standards provide a useful benchmark for reform.

The global trend toward outcome-based legal education, which defines the goals of legal education in terms of the competencies that graduates are expected to possess rather than the subjects they are expected to have studied, is directly relevant to Bangladesh's curriculum reform debates. Outcome-based education (OBE) asks: what should a law graduate be able to do as a result of her legal education? What analytical skills, practical competencies, and professional values should she possess? And how should the curriculum, pedagogy, and assessment of legal education be designed to develop these outcomes? This approach, which has been adopted by several progressive law schools in Bangladesh including Notre Dame University Bangladesh, represents a significant advance over the traditional input-based approach that defines legal education in terms of subjects studied rather than competencies developed.

CHAPTER THIRTEEN: HISTORICAL AND COMPARATIVE PERSPECTIVES ON BAR COUNCIL REFORM

Section 13.1: The Reform of Legal Professional Bodies in Comparative Perspective

The Bangladesh Bar Council is not the only legal professional regulatory body in the world that has been the subject of serious reform debates. Comparing the Bangladesh experience with reform processes in other jurisdictions provides valuable insights into the nature of the challenges involved, the range of solutions that have been tried, and the conditions under which reform succeeds or fails.

The reform of the English legal profession, which culminated in the Legal Services Act 2007, is perhaps the most comprehensive and radical reform of a legal professional regulatory structure that any common law jurisdiction has undertaken. The Act, prompted by the Clementi Review of 2004, which concluded that the existing system of self-regulation by the Law Society and the Bar Council was inadequate to protect the public interest, fundamentally restructured the regulation of legal services in England and Wales. It established the Legal Services Board as an independent oversight regulator, separated the representative functions of the professional bodies (advocating for members' interests) from their regulatory functions (setting and enforcing standards), and introduced a new model of entity regulation that allows non-lawyers to provide legal services through alternative business structures.

The fundamental philosophical shift underlying the English reforms was from a model of professional self-regulation, in which the profession regulated itself primarily for its own benefit with the public interest as a secondary consideration, to a model of independent regulation, in which the regulatory function is exercised by a body that is independent of both the profession

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and the government and that is explicitly designed to serve the public interest. The Legal Services Board is accountable not to the legal profession but to the Lord Chancellor and through her to Parliament, and its mandate is explicitly defined in terms of the public interest in having high-quality, accessible, and competitively priced legal services.

This English experience is instructive for Bangladesh, but it must be applied with careful attention to differences in context. The English legal market is enormously sophisticated, the professional bodies are highly resourced, and the political conditions for radical reform were created by a specific combination of factors including sustained public criticism of professional self-regulation, a reformist government with a clear mandate, and the completion of a comprehensive independent review. Bangladesh's legal market is very different, its professional bodies are less resourced and more politically embedded, and the conditions for similarly radical reform do not currently exist. This does not mean that the English model is irrelevant, but it does mean that the reform program for Bangladesh must be designed with a realistic assessment of what is achievable in the current political and institutional environment.

The reform of the Indian Bar Council, which has been a subject of ongoing debate for decades, provides a more directly comparable case study. The Bar Council of India, established under the Advocates Act 1961, faces many of the same problems as the Bangladesh Bar Council: political capture, inadequate enforcement of professional standards, corruption allegations in enrollment processes, and a legal education system of highly uneven quality. The reforms introduced in India, including the establishment of the National Law Schools (beginning with the National Law School of India University in Bangalore in 1987), the introduction of the All India Bar Examination (AIBE), and the ongoing debates about the reform of the Bar Council of India itself, all offer relevant lessons for Bangladesh.

The National Law School model in India is particularly instructive for Bangladesh. The National Law Schools were established outside the existing university system, with dedicated funding, residential facilities, small batch sizes, and faculty recruited on research-based criteria similar to those used in leading American law schools. They were designed to be islands of excellence in a sea of mediocrity, demonstrating what Indian legal education could achieve when properly resourced and properly managed. The National Law Schools have produced a generation of Indian lawyers who are internationally competitive, who have developed the research capacity of Indian legal academia, and who are beginning to contribute to the development of India's legal system in ways that were simply not possible before their establishment.

A similar initiative in Bangladesh, the establishment of one or more National Law Schools with dedicated funding, research-focused faculty, small batch sizes, and a genuinely innovative curriculum, could have a transformative effect on the quality of legal education in the country. Such schools would serve not only to produce better-trained graduates but also to demonstrate to the existing university law programs what high-quality legal education looks like, creating competitive pressure for quality improvement across the system.

Section 13.2: The Philosophical Basis of Legal Professional Ethics

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Any comprehensive discussion of the reform of the Bar Council and legal education must address the question of legal professional ethics, because ethics is the foundation upon which the entire edifice of professional regulation rests. The purpose of regulating the legal profession is not simply to ensure technical competence; it is to ensure that technically competent lawyers also behave ethically, serving their clients' interests honestly and within the limits of their professional obligations, and contributing to the broader administration of justice rather than subverting it.

The philosophical foundations of legal ethics have been extensively explored in the academic literature. David Luban's Lawyers and Justice (1988) provides one of the most searching philosophical analyses of the tensions inherent in the lawyer's role. Luban argues that lawyers face a fundamental moral dilemma: their obligation to zealously represent their clients' interests conflicts with their obligation as officers of the court to serve the administration of justice. The standard conception of the lawyer as a "hired gun" who does whatever her client demands within the formal limits of the law is, Luban argues, morally inadequate. A morally serious lawyer cannot simply do whatever her client pays her to do; she must exercise independent moral judgment about the uses to which her professional skills are put.

This philosophical debate is directly relevant to the development of professional ethics training in Bangladesh. The current system of legal education pays insufficient attention to professional ethics. Law students learn about the formal professional conduct rules contained in the Canons of Professional Conduct and Etiquette published by the Bar Council, but they receive little instruction in the ethical reasoning that these rules embody and that must inform the exercise of professional judgment in cases not clearly covered by the rules. The development of a robust program of professional ethics education, integrated into the law school curriculum from the first year and continuing through professional training, is one of the most important reforms needed in Bangladesh.

The distinctive ethical challenges facing lawyers in Bangladesh, including the ethics of practicing in a system characterized by delay, corruption, and inadequate access to justice, deserve specific attention in ethics education. How should a lawyer respond when she becomes aware that an opposing party has bribed a court official? What are her obligations when she knows that her client is presenting false evidence? How should she handle the pressure from clients to pursue delay tactics that are technically permissible but that prevent timely justice? These are not theoretical questions; they are practical dilemmas that Bangladeshi lawyers face regularly, and legal education needs to prepare them to navigate these dilemmas with integrity.

CONCLUDING SYNTHESIS OF PART ONE: TOWARD A JURISPRUDENTIALLY GROUNDED PROGRAM OF REFORM

The preceding chapters have covered an enormous range of material, from the civilizational roots of Bengali legal culture through the colonial transformation, the founding of the Bangladeshi state, the philosophical foundations of the constitutional order, the structure of the legal system, the history and current state of the Bangladesh Bar Council, the problems of legal education, and

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the challenges of professional training. It is now appropriate to draw these threads together and articulate, at a general level, the principles that should guide a comprehensive program of legal reform in Bangladesh.

The first principle is that reform must be grounded in a genuine understanding of the system being reformed. The preceding chapters have tried to provide that understanding, combining historical analysis, jurisprudential theory, comparative study, and empirical investigation of the current situation. Reform proposals that are not informed by this kind of deep understanding are likely to address symptoms rather than causes, to produce unintended consequences, or to fail because they underestimate the institutional and cultural obstacles that stand in their way.

The second principle is that reform must be guided by a clear sense of purpose: what is the legal system for, and what should the reformed system achieve? This textbook has argued that the fundamental purpose of the legal system is to serve justice, to protect the rights of citizens, to regulate the relationships among members of society in a fair and predictable way, and to provide mechanisms for the peaceful resolution of disputes. Every reform proposal must be evaluated against this fundamental purpose: does it make the legal system more effective at serving justice, protecting rights, and resolving disputes? If it does, it deserves support. If it does not, it should be rejected regardless of the interests it serves.

The third principle is that reform must be comprehensive and systemic rather than piecemeal and fragmentary. The problems of the Bangladeshi legal system are deeply interconnected. The inadequate quality of legal education feeds into the inadequate quality of the bar, which feeds into the inadequate quality of legal services, which feeds into the inadequate functioning of the courts, which feeds into the poor outcomes of the justice system. Addressing any one of these problems in isolation will produce limited results; a comprehensive approach that addresses all of them together, in a coordinated and mutually reinforcing way, is needed.

The fourth principle is that reform must be inclusive and participatory. The process of developing reform proposals must involve all the stakeholders in the legal system: students, junior advocates, senior practitioners, judges, clients, academics, civil society organizations, and the general public. This is not merely a procedural nicety; it is essential for producing reform proposals that are well-informed, practically feasible, and sufficiently widely supported to be effectively implemented.

The fifth principle is that reform must be informed by comparative experience without being slavishly imitative of foreign models. Bangladesh can and should learn from the experience of other common law jurisdictions in reforming their legal education systems and professional regulatory frameworks. But the solutions appropriate for England, India, or Australia are not necessarily appropriate for Bangladesh. The specific conditions of Bangladesh, its legal heritage, its social context, its economic development level, and its political culture, all require that imported models be adapted to local conditions rather than transplanted wholesale.

The following eleven parts of this textbook will develop these principles into specific reform proposals across all the major areas of concern: the restructuring of the Bar Council, the reform of the enrollment examination, the abolition of the two-year LLB program in its current form, the

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introduction of a national LLB admission test, the reform of legal education curricula and pedagogy, the development of clinical legal education, the introduction of mandatory continuing professional development, the development of specialization, the establishment of a professional doctoral program in law, and the broader reform of the court system and access to justice. Each of these topics deserves and will receive the detailed analytical attention that the complexity of the subject requires.

But the foundation for all of these specific discussions has been laid in this first part. The historical depth, the jurisprudential framework, the comparative perspective, and the philosophical commitment to justice that have been developed in the preceding chapters are the intellectual equipment with which the rest of this textbook will work. They are not incidental to the reform agenda; they are its basis. Legal reform that is not grounded in a serious understanding of the legal system's history, philosophy, and social context is not reform at all. It is tinkering. This textbook aspires to something more ambitious: a genuinely transformative engagement with one of the most important public institutions in Bangladesh, an engagement that takes seriously both the depth of the problems and the possibility of genuine improvement.

The legal system of Bangladesh has immense unrealized potential. It has a rich and sophisticated heritage, a committed cadre of practitioners and scholars, a constitutional framework that embodies genuine commitments to justice, democracy, and human rights, and a population that is increasingly aware of its rights and increasingly demanding of the institutions that are supposed to protect them. The reforms proposed in this textbook are designed to help that potential be realized, to help Bangladesh develop a legal system that genuinely serves its people, that the profession can be genuinely proud of, and that the world can look to as a model of what a postcolonial, democratic, developing-country legal system can achieve.

That is the ambition of this work. It is an ambitious ambition. But ambition, properly grounded in understanding, guided by principle, and sustained by commitment, is exactly what legal reform in Bangladesh requires.

BIBLIOGRAPHICAL NOTES AND REFERENCES FOR PART ONE

The intellectual debts incurred in writing Part One are numerous and important to acknowledge. The analysis of pre-colonial legal traditions in Bengal draws on the foundational scholarship of Romila Thapar on ancient Indian society, P.V. Kane's monumental five-volume History of Dharmashastra, and Wael Hallaq's magnificent study of Islamic legal history, An Introduction to Islamic Law (Cambridge University Press, 2009). Hallaq's Sharia: Theory, Practice, Transformations (Cambridge University Press, 2009) is the essential modern study of the Islamic legal tradition in historical perspective. Jimutavahana's Dayabhaga is available in the translation by Colebrooke, though scholars of Bengali legal history should also consult Ludo Rocher's comprehensive analysis of the Dharmashastra literature.

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The Carnegie Foundation Report on legal education, William Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (Jossey-Bass, 2007), is essential reading for legal education reform. The IBA Standards for the Establishment and Regulation of Legal Education (2021) provide the current global framework. The Law Commission of Bangladesh's 2006 Report on Review of Legal Education in Bangladesh is the key domestic document on legal education reform.

Contemporary journalistic and analytical sources of importance include The Daily Star's November 30, 2024 analysis "Bangladesh Bar Council: A Call for Urgent Reform," which provides valuable recent documentation of the problems identified in Chapters Seven and Eight. The same newspaper's 2017 article "Taking Legal Education Seriously" by Ridwanul Hoque provides essential background on the 2016-2017 Supreme Court cases on legal education.

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END OF PART ONE

Part Two will address in comprehensive detail the reform of the Bangladesh Bar Council, including the case for structural transformation of its governance, the reform of its electoral system, the development of its regulatory capacity, and the reconfiguration of its relationship with legal education and the judiciary.

Part Three will examine the enrollment examination in exhaustive detail, presenting the full case for its transformation and proposing a detailed alternative framework for professional qualification.

Part Four will address the reform of legal education, including the abolition of the two-year LLB program in its current form, the introduction of the national LLB admission test, and the comprehensive redesign of the LLB curriculum.

The subsequent parts will address professional training, specialization, the professional doctoral program, the reform of the court system, access to justice, personal law reform, the future of Islamic jurisprudence in Bangladesh, and the international dimensions of Bangladeshi law.

PART TWO: THE REFORM OF THE BANGLADESH BAR COUNCIL - GOVERNANCE, ACCOUNTABILITY, ELECTORAL SYSTEMS, REGULATORY CAPACITY, AND THE PATH TO INSTITUTIONAL TRANSFORMATION

PREFATORY NOTE TO PART TWO

Part One of this textbook laid the historical, philosophical, and jurisprudential foundations upon which all subsequent analysis rests. It traced the civilizational roots of Bengali legal culture, examined the colonial legal revolution and its lasting consequences, analyzed the jurisprudential basis of the Bangladeshi constitutional order, and introduced the structure of the legal system including the Bangladesh Bar Council in its broad outlines. Part Two builds directly upon those foundations, turning from the landscape of legal history and jurisprudential theory to the specific, demanding, and politically charged terrain of institutional reform.

This part arrives at a moment of genuinely extraordinary historical significance for Bangladesh. The July Uprising of 2024, which brought down the government of Sheikh Hasina after more than fifteen years of increasingly authoritarian rule, created conditions for institutional reform more propitious than any Bangladesh has experienced since the founding of the republic in 1971. The interim government led by Professor Muhammad Yunus, acting under the extraordinary political mandate generated by the student-people uprising, established eleven reform commissions covering virtually every major area of governance, including, crucially, the judiciary. The Judiciary Reform Commission, headed by former Appellate Division Justice Shah Abu Nayeem Mominur Rahman, submitted its comprehensive 380-page report in February 2025.

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The July National Charter, signed by twenty-five political parties in October 2025, embedded eighty-four reform recommendations into a framework that received a sixty-eight percent endorsement in the national referendum held simultaneously with the general election of February 12, 2026. A new Bangladesh Bar Council election has been announced for May 19, 2026, the first since the political transformation of August 2024.

These are not routine developments. They represent a window of genuine reform opportunity that, if missed, may not open again for a generation. Part Two of this textbook is therefore not merely an academic exercise in institutional analysis; it is a contribution to an urgent, live, consequential policy debate. The arguments advanced here, grounded in jurisprudential theory, comparative analysis, and empirical investigation of the Bangladeshi legal system, are meant to inform that debate in a way that serves the genuine public interest in a competent, ethical, independent, and accessible legal profession.

One note on a specific recent development of direct relevance: the constitutional referendum of February 2026, which passed with a sixty-eight percent majority, included among its eighty-four reform proposals several that directly affect the institutional environment within which the Bar Council operates. The proposals for judicial independence, for the establishment of a new mechanism for the appointment of Supreme Court judges, and for financial autonomy of the judiciary will all reshape the constitutional context within which the legal profession functions. Part Two analyzes these developments and their implications for Bar Council reform in detail.

CHAPTER FOURTEEN: THE ANATOMY OF INSTITUTIONAL FAILURE - DIAGNOSING THE BAR COUNCIL'S STRUCTURAL PROBLEMS

Section 14.1: The Framework of Institutional Analysis

Before prescribing reform, good intellectual practice requires a thorough diagnosis. The Bangladesh Bar Council is an institution that has been performing below the standards that its legal mandate, its professional resources, and the public interest in a high-quality legal profession together require. But institutional failure, like disease, has causes that must be correctly identified if treatment is to be effective. The application of remedies to symptoms rather than causes produces temporary relief at best and potentially makes the underlying condition worse at worst.

The framework of institutional analysis that this chapter applies draws on several intellectual traditions. From organizational sociology, particularly the work of W. Richard Scott in Institutions and Organizations (1995) and Paul DiMaggio and Walter Powell's foundational article "The Iron Cage Revisited" (1983), it draws the concept of institutional isomorphism, the tendency of organizations within the same field to converge on similar structures and practices regardless of whether those structures and practices are actually effective, as a result of coercive pressure (from governments and regulators), mimetic pressure (copying apparently successful models), and normative pressure (from professional standards). From political science, particularly the work of Elinor Ostrom on collective action and the governance of shared

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resources (Governing the Commons, 1990), it draws the concept of institutional design principles: the conditions under which collective self-governance works well rather than degenerating into free-riding and collective failure. From jurisprudential theory, it draws the earlier-discussed accounts of Pound, Hart, and Fuller regarding the conditions for effective legal and quasi-legal institutions.

Applied to the Bangladesh Bar Council, this framework generates a structured analysis of the institution's failures across four dimensions: governance failures (problems with how the institution makes decisions and who controls it), regulatory failures (problems with how it performs its regulatory functions), educational failures (problems with its role in legal education and professional development), and representational failures (problems with how it represents the profession's interests to external stakeholders).

Section 14.2: Governance Failures - Political Capture and Its Consequences

The most fundamental governance failure of the Bangladesh Bar Council is political capture. As analyzed in Part One, Bar Council elections in Bangladesh are organized along national political party lines, and the composition of the Bar Council at any given time closely tracks the political balance of power in the country at large. This pattern of political capture has been so consistent and so complete over the Bar Council's history that it has come to seem natural, even inevitable. It is neither.

Political capture of a professional regulatory body is not inevitable; it is the product of specific institutional design choices that create incentives for political organization and that fail to create countervailing incentives for professional, non-partisan regulatory behavior. The Bar Council's electoral system, in which all practicing advocates elect members at large, creates conditions in which organized political networks have an enormous advantage over unorganized professional meritocrats. A lawyer who is affiliated with the dominant political party of the moment can mobilize thousands of politically aligned advocates to vote for bar council seats, while a lawyer who simply has a distinguished professional record but no political organization has difficulty mobilizing any comparable electoral support.

The consequences of political capture are pervasive and serious. First, Bar Council decisions on regulatory matters, including enforcement of professional conduct rules, management of the enrollment examination, and allocation of Bar Council resources, are influenced by political rather than professional considerations. Advocates affiliated with the governing party may receive more favorable treatment in disciplinary proceedings; candidates affiliated with the governing party may receive more favorable treatment in the enrollment examination. Whether or not these influences are always determinative, their existence is sufficient to undermine the legitimacy and credibility of the institution's regulatory decisions.

Second, political capture means that the Bar Council cannot perform its function as an independent voice for the legal profession in advocacy to the government and the legislature. When the Bar Council is controlled by the governing party's lawyers, it cannot effectively criticize government actions that adversely affect the independence of the bar or the interests of the public in an independent legal profession. The Bar Council under Awami League control was

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unlikely to criticize Awami League government actions; the Bar Council under BNP control was unlikely to criticize BNP government actions. This structural incapacity for independent advocacy means that one of the most important functions of a professional body, representing the profession's collective judgment against encroachments by state power on the independence of the bar, has been systematically absent from Bangladeshi legal institutional life.

Third, political capture distorts the Bar Council's electoral politics in ways that are damaging to the institution's internal governance. Bar Council election campaigns in Bangladesh have been characterized by the expenditure of very large amounts of money, by allegations of irregularities in voting, and by the organization of voting blocs along lines of personal, regional, and political loyalty rather than professional qualification. Candidates for Bar Council seats are selected by political parties on the basis of their party loyalty and their ability to mobilize voters, not on the basis of their professional distinction or their demonstrated commitment to regulatory excellence. The result is a Bar Council membership that may not include the most professionally distinguished members of the bar, and that certainly does not include members selected primarily on the basis of regulatory competence.

The newly announced Bar Council election for May 19, 2026 is, in this context, a moment of enormous significance. It takes place in a dramatically changed political environment, following the fall of the Awami League government, the extraordinary political transformation of 2024-2026, and the adoption of a new political framework through the July National Charter. If Bar Council elections continue on the old pattern of naked political organization, the opportunity presented by this historical moment will be lost. If the new election is instead organized in a way that prioritizes professional qualification and regulatory competence over political loyalty, it could mark the beginning of a genuinely transformed Bar Council.

Section 14.3: Regulatory Failures - Weak Enforcement and Inadequate Standards

The Bar Council's regulatory failures are as serious as its governance failures, and the two are deeply connected. An institution that is politically captured cannot effectively regulate the profession, because effective regulation requires making decisions that will be unpopular with influential practitioners, that will be challenged by the politically connected, and that require a sustained commitment to professional standards over the short-term convenience of letting things slide.

The disciplinary system of the Bar Council, as we noted in Part One, has been chronically inadequate. Complaints against advocates are resolved extremely slowly, sometimes taking years to produce a final decision. The standards applied in disciplinary proceedings are inconsistently defined and inconsistently applied. The sanctions imposed on practitioners found guilty of professional misconduct are often disproportionately light relative to the gravity of the misconduct. And the overall rate of disciplinary action is very low relative to the number of complaints about professional misconduct that are informally known to circulate within the profession and among the public.

The inadequacy of the disciplinary system has several specific dimensions. First, there is the problem of delayed justice within disciplinary proceedings. When a complaint is filed against an

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advocate for professional misconduct, the resolution of that complaint should occur with reasonable speed, both because justice delayed is justice denied and because an advocate who is the subject of a complaint should not have the cloud of an unresolved allegation hanging over her professional life for an unreasonable period. But Bar Council disciplinary proceedings routinely take years from filing to decision, which means that the deterrent effect of potential discipline is severely weakened, and that even when discipline is ultimately imposed, its practical impact on the conduct of other practitioners is minimal because the connection between the misconduct and the sanction is too temporally remote to be psychologically salient.

Second, there is the problem of evidence and procedure in disciplinary proceedings. The standard of proof applied in Bar Council disciplinary proceedings, the rules governing the admission of evidence, and the procedural rights of the accused advocate have not been clearly and consistently defined. This procedural uncertainty creates both unfairness to accused advocates and difficulty for the prosecution of meritorious complaints. A clear, fair, and consistently applied procedural framework for disciplinary proceedings is a basic requirement of the rule of law applied to professional regulation.

Third, there is the problem of scope. The Bar Council's disciplinary jurisdiction extends only to advocates on its roll. It cannot discipline legal practitioners who are not enrolled advocates but who nonetheless provide legal services, such as the large informal sector of legal document preparers and advice providers who operate in rural areas without formal legal qualifications. And it cannot effectively discipline advocates who commit misconduct in ways that are difficult to detect or document, such as the acceptance of bribes from clients or the fabrication of evidence, unless a formal complaint is filed and prosecuted.

The regulatory failures extend beyond the disciplinary system to the Bar Council's function of setting and enforcing professional standards more broadly. The Canons of Professional Conduct and Etiquette published by the Bar Council are the formal statement of the ethical standards that advocates are required to meet. But these Canons have not been systematically updated to reflect contemporary ethical challenges, including the ethical issues arising from digital practice, the use of social media, the representation of clients in international arbitration, and the ethical dimensions of legal work in environmental, human rights, and public interest law. A professional regulatory body that allows its ethical standards to become outdated is failing in one of its most fundamental functions.

Section 14.4: Educational Failures - The Bar Council's Neglected Training Function

The Bangladesh Bar Council Order 1972 expressly empowers the Bar Council to promote legal education and the training of lawyers. This educational function, which we touched on in Part One in the discussion of LETI and the Bar Vocational Course, is one of the areas where the gap between the Bar Council's formal mandate and its actual performance is widest.

The failure to consistently operate a Bar Vocational Course is the most visible educational failure. But it is symptomatic of a broader failure to take the Bar Council's educational function seriously. The Legal Education Committee of the Bar Council, which is supposed to provide oversight of legal education both within LETI and in the university law schools, has not

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functioned effectively as a regulatory body for legal education quality. The proliferation of university law programs of widely varying quality, which the Supreme Court felt compelled to address through judicial direction in 2016 and 2017, was in part a consequence of the Bar Council's failure to exercise its educational oversight function proactively.

The Bar Council's failure to develop and operate a comprehensive system of continuing professional development for practicing advocates is another major educational failure, discussed in Part One. And the absence of any systematic quality assurance of the pupillage system, through which new advocates are supposed to receive their practical training under the supervision of senior advocates, means that the quality of practical training varies enormously and is inadequately monitored.

Section 14.5: Representational Failures - The Bar Council as an Absent Voice

A professional regulatory body that is politically captured and internally dysfunctional cannot effectively represent the profession's collective interests to external stakeholders, including the government, the legislature, the judiciary, the media, and the public. The Bangladesh Bar Council's performance as a representative body for the legal profession has been inadequate in several important respects.

The Bar Council has not been a consistent or effective advocate for the rule of law and the independence of the judiciary. During periods of executive encroachment on judicial independence, the Bar Council, dominated as it was by the governing party's lawyers, was conspicuously silent. During the years of the Awami League government, when the judiciary faced serious allegations of executive interference, the Bar Council did not mount a sustained institutional critique or a coordinated professional response. This silence was not merely professionally irresponsible; it was a betrayal of the Bar Council's fundamental obligation to protect the conditions that make the rule of law possible.

The Bar Council has similarly been ineffective as an advocate for the interests of the public in having an accessible, affordable, and competent legal system. The issues of case backlog, delay, inadequate access to legal services in rural areas, the prohibitive cost of legal representation for ordinary citizens, and the systematic disadvantaging of the poor in the justice system are all matters of profound public concern that a genuine professional regulatory body should be advocating to address. The Bangladesh Bar Council has not been an effective voice on any of these issues, which are at the heart of the public interest in the legal system.

CHAPTER FIFTEEN: THE ELECTORAL SYSTEM OF THE BAR COUNCIL - POLITICAL THEORY AND REFORM DESIGN

Section 15.1: The Theory of Professional Self-Governance and Electoral Democracy

The debate about how a professional regulatory body should be governed goes to the heart of the theory of professional self-regulation. There are, broadly speaking, three models for governing a

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professional regulatory body: the self-governance model (the profession governs itself through elected representatives), the state control model (the government appoints the regulatory body), and the independent regulation model (the regulatory body is governed by a combination of professional and lay representatives, appointed or elected through processes designed to ensure independence from both the profession's economic interests and the government's political interests).

The Bangladesh Bar Council, as constituted under the 1972 Order, operates primarily on the self-governance model, with the significant qualification that the government controls the appointment of the Secretary (the chief executive officer) and that the Attorney-General is Chairman ex officio. This hybrid model was designed to combine the virtues of professional self-governance with some measure of governmental oversight, but in practice it has produced neither. The governmental elements of the structure have made the Bar Council susceptible to government influence without providing effective external accountability, while the elected elements have become dominated by political party organization rather than professional merit.

John Stuart Mill's arguments for representative government in Considerations on Representative Government (1861) are highly relevant to the question of how professional bodies should be governed. Mill argued that the quality of governance depends critically on the quality of the electorate, not just the quality of the elected. When an electorate is poorly informed, easily manipulated, or organized primarily around factional loyalties rather than genuine assessment of candidates' qualifications, the results of electoral competition will reflect those deficiencies. The election of Bar Council members by the full electorate of practicing advocates in Bangladesh produces outcomes that reflect the political organization of the bar rather than the professional qualifications of candidates, because the electorate is organized politically rather than professionally.

The alternative, which draws on theories of deliberative democracy and on the practical experience of professional regulatory reform in other jurisdictions, is to design the electoral or appointment process for the regulatory body in a way that is specifically designed to select for regulatory competence rather than political loyalty. This requires changing both the selection process and the incentive structure within which the regulatory body operates.

Section 15.2: Comparative Models of Bar Council Governance

The reform of the governance structure of bar councils and law societies has been a significant area of policy development in many common law jurisdictions in recent decades, and the comparative experience offers important lessons for Bangladesh.

The English model, transformed by the Legal Services Act 2007, is the most radical departure from traditional professional self-governance. As noted in Part One, the Act established the Legal Services Board (LSB) as an independent oversight regulator with responsibility for approving the regulatory arrangements of the "approved regulators" (including the Bar Standards Board and the Solicitors Regulation Authority). The key innovation of the English model was the separation of the regulatory and representative functions of the professional bodies: the Bar Council's representative function (speaking for barristers' interests) was separated from the Bar

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Standards Board's regulatory function (setting and enforcing standards). The Bar Standards Board is governed by a Board that includes both barristers and lay members, with lay members constituting a majority, specifically to prevent the regulatory body from becoming captured by the professional interests it is supposed to regulate.

The Australian model of legal professional regulation varies by state and territory, but the general trend has been toward independent regulation with significant lay involvement. The Legal Services Commissioner in many Australian states exercises oversight functions that are independent of the professional bodies, and the governance of state law societies and bar associations includes increasing proportions of non-lawyer members. The New South Wales Law Society, for example, has undergone significant governance reforms to increase the accountability and transparency of its regulatory functions.

The Canadian model, as practiced by law societies in the various provinces, has also moved toward greater lay involvement and more explicit public interest orientation in professional regulation. The Law Society of Ontario, one of the largest law societies in the common law world, has a Bencher system in which elected benchers (lawyers) are supplemented by appointed lay benchers who represent the public interest perspective. Governance reforms have increased the number and the influence of lay benchers over the past two decades, specifically in response to concerns that the professional body was too insular and too focused on members' interests.

The Indian model is the most directly comparable to Bangladesh's, given the shared colonial legal heritage and similar institutional history. The Bar Council of India, established under the Advocates Act 1961, faces many of the same problems as the Bangladesh Bar Council and has been the subject of extensive reform debate. The Madhav Menon Committee report on legal education reform (2010) and subsequent reports by various law commissions have proposed significant changes to the Bar Council of India's governance and regulatory functions, including measures to reduce political capture, strengthen disciplinary enforcement, and improve legal education oversight. Implementation has been slow and incomplete, providing a cautionary tale about the difficulty of reforming deeply entrenched professional institutions even when the case for reform is intellectually compelling.

Section 15.3: Designing a Reformed Electoral and Governance System

The reform of the Bar Council's electoral and governance system requires balancing several competing considerations: the legitimate interest of the legal profession in self-governance, the public interest in effective regulation, the need for institutional independence from both the profession's economic interests and the government's political interests, and the practical constraints of what is institutionally feasible in the Bangladeshi context.

The first and most fundamental reform is the separation of the regulatory and representative functions of the Bar Council. The current Bar Council performs both functions simultaneously: it acts as the regulator of the profession (setting and enforcing standards, conducting the enrollment examination, administering discipline) and as the representative of the profession's interests (advocating to the government and the public on matters affecting the bar). These functions are in inherent tension. A body that is supposed to protect the public against incompetent or

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unethical lawyers cannot simultaneously be fully committed to protecting the economic interests of those same lawyers. The conflation of these functions has consistently resulted in the subordination of the regulatory function to the representative function, because the elected members of the Bar Council derive their political support from the advocates whose interests they represent and who would be adversely affected by vigorous regulatory enforcement.

The separation would work as follows. The Bar Council in its representative capacity, as the voice of the legal profession, would continue to be elected by advocates and to advocate for the profession's collective interests. But the regulatory functions, specifically the enrollment examination, professional standards-setting, and disciplinary enforcement, would be transferred to a separate Regulatory Authority (perhaps to be called the Legal Services Regulatory Authority of Bangladesh, or LSRAB) that is governed by a Board whose composition is designed to ensure independence from both professional and governmental interests.

The composition of the LSRAB Board is a critical design question. Drawing on the best practices from other jurisdictions, the Board should include a significant proportion of non-lawyer public interest members (ideally at least half the total membership), who are appointed by a process that is independent of both the legal profession and the government. Such a process might involve appointment by a Parliamentary Committee, by an independent appointments commission, or by the Chief Justice after consulting with a broad range of stakeholders. The professional members of the Board should be selected not by the general electorate of advocates (which produces politically organized outcomes) but through a more structured selection process that assesses regulatory competence, professional distinction, and commitment to the public interest.

The second major governance reform is the introduction of term limits for members of the regulatory and representative bodies. Indefinite tenure on the Bar Council, or the possibility of repeatedly renewing three-year terms, creates conditions for the entrenchment of particular factions and individuals that is inconsistent with the institution's need to be responsive to changing professional conditions and evolving public interest requirements. A clear limit of two consecutive terms, with a mandatory interval before re-election or reappointment, would introduce a regular renewal of membership that would make entrenchment more difficult.

The third major reform is the introduction of robust conflict-of-interest rules for Bar Council and regulatory authority members. Members of the regulatory body should not sit on cases involving advocates from their own political organizations, their personal or professional networks, or their own former clients. The conflict-of-interest rules should be clearly defined, publicly disclosed, and actively enforced.

The fourth reform is the introduction of transparency requirements that go significantly beyond what the current Bar Council provides. All decisions of the regulatory body, including decisions on enrollment, professional standards, and discipline, should be accompanied by published written reasons. All regulatory proceedings should be conducted with appropriate openness. The regulatory body's finances should be subject to independent audit and the audit reports should be publicly accessible. And an annual public report should document the regulatory body's activities, its enforcement statistics, and its assessment of the state of the profession.

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Section 15.4: The Problem of Bar Association Politics and District-Level Governance

The governance problems of the Bar Council are replicated at the district level in the governance of the district bar associations. These associations, which provide the immediate professional community for the vast majority of Bangladeshi advocates, are autonomous bodies governed by their own elected leaderships. The internal politics of district bar associations are often intensely contested, and the relationship between bar association politics and broader national politics is as close at the district level as at the national level.

The district bar associations perform several important functions. They provide a forum for professional networking and solidarity among advocates in each district. They maintain the registers of advocates entitled to practice before the district courts. They represent the collective interests of their members in dealings with the district administration and the district courts. And they provide an important social and professional community for advocates who may spend their entire professional careers practicing in a single district.

But the district bar associations also have serious dysfunction. Elections to bar association offices are often accompanied by violence, intimidation, and allegations of fraud. The office-bearers of powerful bar associations can exercise significant informal influence over the allocation of clients, the conduct of proceedings in the district courts, and the treatment of advocates by the district court administration. Junior advocates in particular are sometimes vulnerable to exploitation by senior bar association office-bearers, who can make access to professional opportunities conditional on political loyalty and personal service.

The reform of district bar association governance requires a combination of statutory regulation (prescribing minimum standards of democratic process and financial accountability for bar associations) and cultural change (developing a professional culture in which political loyalty is less important than professional merit in determining an advocate's opportunities and standing). The statutory dimension is achievable through legislation; the cultural dimension is more difficult and requires sustained engagement with the professional community over a long period.

CHAPTER SIXTEEN: THE ENROLLMENT EXAMINATION - A COMPREHENSIVE REFORM AGENDA

Section 16.1: Reconceiving the Purpose of Professional Qualification

The reform of the enrollment examination requires, first and most fundamentally, a reconception of what professional qualification is for. As we argued in Part One, the current enrollment examination is designed primarily as a test of legal knowledge, specifically the ability to recall statutory provisions and the names and holdings of important cases. But the ultimate purpose of professional qualification is not to ensure that advocates know a lot of law in the abstract; it is to ensure that they can apply legal knowledge competently and ethically in the service of clients and the administration of justice.

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This reconceptualization has radical implications for the design of the qualifying assessment. If the purpose is to assess the capacity for competent and ethical professional performance, then the assessment must actually measure that capacity, using assessment methods that are valid proxies for professional performance. The current system of MCQ, written, and viva voce examinations, whatever its other merits or deficiencies, is not specifically designed to be a valid assessment of professional performance capacity. It is designed to assess legal knowledge, and it does not do even that with the rigor, fairness, and transparency that a proper professional examination requires.

The theoretical foundation for a competence-based approach to professional qualification is well-established in the literature on professional education and assessment. The work of Grant Wiggins on performance assessment, collected in his Assessing Student Performance (1993) and developed further in his collaboration with Jay McTighe in Understanding by Design (1998), established the principle that valid assessment must be aligned with the actual purposes of the educational and professional enterprise. Assessment that is misaligned with purpose, that tests proxy skills rather than the real thing, produces graduates who can pass the assessment but cannot perform the function the assessment is supposed to certify.

Applied to the legal profession, a competence-based approach to qualification would assess candidates across the full range of competencies required for professional practice: legal knowledge, legal reasoning, legal research, written communication, oral communication, professional responsibility and ethics, practical judgment, and client management. Each of these competencies is distinct and requires different assessment methods. Legal knowledge can be assessed by written examination. Legal reasoning requires analytical tasks, such as working through a complex legal problem and explaining the reasoning involved. Legal research requires research tasks, such as identifying and synthesizing relevant authorities on a novel legal question. Written communication requires drafting tasks. Oral communication requires advocacy or presentation exercises. Professional responsibility requires engagement with ethical scenarios and dilemmas. Practical judgment requires simulation of realistic client situations. Client management requires role-play or structured reflection on professional relationships.

No single examination format can adequately assess all these competencies. A comprehensive qualification framework must therefore use multiple assessment methods, carefully designed to assess the full range of relevant competencies. This is more complex and more resource-intensive than a single written examination, but it is also much more likely to produce a valid and fair assessment of the candidate's readiness for professional practice.

Section 16.2: The Case Against Simple Abolition and the Case for Radical Redesign

The debate about the enrollment examination in Bangladesh has sometimes been framed as a binary choice between keeping the current examination and abolishing it entirely. This framing is unhelpful. The question is not whether to have a qualifying assessment but what form that assessment should take.

The case for abolition of the enrollment examination, as articulated in Part One, rests primarily on the claim that the LLB degree is itself a qualifying credential that should be sufficient for

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enrollment. This claim would be compelling if the LLB programs in Bangladesh consistently produced graduates of adequate quality. But as we have documented, the quality of LLB programs in Bangladesh varies enormously, from genuinely excellent programs at leading institutions to programs at numerous smaller institutions whose graduates lack basic legal knowledge. In this context, a qualifying assessment at the point of entry into practice serves an important function as a quality control backstop, catching graduates of inadequate programs who should not be admitted to practice.

The case for retention of some form of qualifying assessment does not, however, imply retention of the current examination in its current form. On the contrary, the current examination must be radically redesigned. The specific redesign proposals set out below are drawn from the analysis in the preceding sections and from comparative experience with professional qualification reform in other common law jurisdictions.

The first reform is the replacement of the MCQ preliminary examination with a more sophisticated preliminary assessment. MCQ tests, while convenient and cheap to administer, test only the recognition of correct answers from a set of alternatives; they do not test the ability to construct legal arguments, to analyze complex scenarios, or to exercise professional judgment. An MCQ examination that filters candidates based on legal knowledge recognition is a very blunt instrument for professional quality control. If a preliminary filter is necessary (and it may be, given the very large number of candidates), a more appropriate alternative would be a structured analytical exercise, perhaps a short essay requiring the candidate to identify legal issues in a factual scenario and explain the relevant law, which better tests the capacity for legal reasoning.

The second reform is a thoroughgoing redesign of the written examination. The written examination should be redesigned to test the competencies that actually matter for professional practice, specifically legal analysis, legal writing, and the application of legal knowledge to complex factual scenarios. The examination questions should be carefully designed by legal education specialists, not merely by committee members drafting from memory. The marking criteria should be clear, detailed, and published in advance. Papers should be marked blind (without knowledge of the candidate's identity). Second-marking and moderation procedures should be systematic and rigorously applied. Candidates should have access to their marked papers and to the reasons for the mark awarded.

The third and most significant reform concerns the viva voce examination. The current viva voce is the most problematic element of the enrollment process because it is the most opaque and the most vulnerable to bias and manipulation. There are two possible approaches to reform. The first is to abolish the viva voce as a component of the enrollment examination and to replace it with assessment methods that provide equivalent information about the candidate's personal qualities and professional suitability in a more structured and transparent way. The second is to retain the viva voce but to radically reform it: to create a structured assessment protocol with defined criteria, trained assessors, mandatory recording of proceedings, published feedback to candidates, and a meaningful right of appeal. Either approach is superior to the current system; the choice between them should depend on what is practically achievable given the resources and institutional capacity available.

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The fourth reform is the creation of an independent assessment body to administer the enrollment examination. The current system, in which the Enrollment Committee administers the examination through the Bar Council's existing machinery, creates conditions in which the assessment process is vulnerable to the governance problems of the Bar Council itself. An independent assessment body, with its own governance, its own staff, and its own accountability mechanisms, would be more resistant to political influence and more capable of consistent, fair, and transparent administration. Models for such bodies exist in other professional qualification contexts: the Solicitors Qualifying Examination in England and Wales is administered by the Solicitors Regulation Authority rather than the professional association; the Bar Professional Training Course assessments are conducted by law schools accredited for this purpose rather than by the Bar Council itself.

Section 16.3: The Timing and Scheduling Problem

A less dramatic but practically important dimension of enrollment examination reform concerns timing and scheduling. The current system, in which the MCQ examination, written examination, and viva voce are spread over the course of an entire calendar year, imposes enormous costs on candidates. These costs are both financial (maintaining oneself through a year of examination preparation and waiting) and professional (the year of waiting is a year during which the candidate is not earning from legal practice). For candidates from less affluent backgrounds, this extended process creates particularly severe hardship and may constitute a significant barrier to entry into the profession.

The reform of examination scheduling is a relatively simple and low-cost improvement that could have immediate and significant benefits. A compressed examination cycle, in which all three stages of the enrollment examination are completed within a period of three to four months, would significantly reduce the financial and personal burden on candidates. In 2025, the MCQ examination was held in April, the written examination in June, and the result was expected in October, with the viva voce to follow after that. This means that candidates must wait the better part of a year, and possibly more, between the start of the process and its conclusion. There is no good reason why this process cannot be compressed significantly, given adequate administrative resources and organizational will.

Additionally, the enrollment examination should be offered at least twice per year, to reduce the cost of failure. A candidate who fails one sitting of the examination currently must wait an entire year before the next opportunity. This annual rhythm creates enormous pressure on individual candidates and means that a single bad day, a single piece of bad luck, can cost a candidate a full year of professional progress. Twice-yearly examinations would significantly reduce this cost and would bring Bangladesh into line with the practice in many other jurisdictions.

Section 16.4: The Financial Burden of Enrollment and Access to the Profession

The enrollment process imposes significant financial burdens on aspiring advocates that deserve specific attention as an access-to-justice issue. The fees charged by the Bar Council for enrollment, the costs of obtaining necessary documents and certificates, the cost of examination preparation (including private coaching, which many candidates feel compelled to seek), and the

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cost of living without income during the period between graduation and enrollment all together constitute a substantial financial obstacle to entry into the profession, an obstacle that falls disproportionately on candidates from less affluent backgrounds.

The Daily Star's November 2024 analysis of Bar Council reform called for the introduction of a system of conditional grants or interest-free loans to help young advocates meet the financial costs of enrollment and early professional life. This proposal deserves strong support. A profession that is effectively closed to economically disadvantaged candidates, regardless of their intellectual ability and professional aptitude, is a profession that will systematically reproduce social privilege rather than reflecting the diversity of talent in the population. And a legal profession that does not reflect the social diversity of the population it serves will be systematically less capable of understanding and responding to the legal needs of the disadvantaged majority.

The Benevolent Fund of the Bar Council, which currently provides some financial support to advocates in hardship, could be expanded and refocused to include support for new entrants to the profession, as well as the current supports for established advocates facing difficulty. The introduction of flexible payment schemes for Bar Council registration fees, allowing payment in installments over the first years of practice, would reduce the upfront financial barrier to enrollment. And the development of a scholarship scheme for law students from disadvantaged backgrounds, funded by a combination of Bar Council resources and government support, would address the financial barrier to legal education that precedes the enrollment barrier.

Section 16.5: The Jurisprudential Basis of Fair Assessment - Natural Justice and Administrative Law

The design of the enrollment examination is not merely a matter of technical assessment methodology; it is also a matter of administrative law and constitutional obligation. The enrollment examination is an administrative process with the power to affect individuals' rights to practice their chosen profession. As such, it must comply with the principles of natural justice and procedural fairness that are guaranteed by the Constitution and that the courts enforce through the writ jurisdiction of the High Court Division.

The principles of natural justice, as developed in the common law tradition and applied in Bangladeshi administrative law, have two core requirements: the right to be heard (audi alteram partem, the other side must be heard) and the right to an unbiased decision-maker (nemo judex in causa sua, no one may be a judge in their own cause). The first requirement means that a candidate who is at risk of failing the enrollment examination must have an adequate opportunity to present her case, to know the case against her, and to challenge adverse evidence or assessment. The second requirement means that the persons who assess the candidate must not have a personal interest in the outcome of the assessment, whether that interest is financial, political, or personal.

The current enrollment examination, and in particular the current viva voce process, raises serious questions of compliance with both principles. On the first principle, candidates who fail the viva voce are not given reasons for their failure, do not have access to the record of the

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examination, and have no meaningful right of appeal. This is a clear violation of the right to be heard in any meaningful sense. On the second principle, the composition of the Enrollment Committee and the identity of individual assessors are not always publicly disclosed, and there is no systematic process for identifying and managing potential conflicts of interest among assessors.

The Supreme Court of Bangladesh's jurisprudence on natural justice and fair procedure in administrative contexts provides a strong constitutional basis for challenging these deficiencies. The High Court Division has in numerous cases required administrative bodies to provide reasons for their decisions, to disclose relevant information to persons affected by those decisions, and to ensure that decision-makers are not biased. There is a compelling argument that the enrollment examination process, as currently administered, is in breach of these constitutional requirements, and that a successful constitutional challenge to the viva voce process in particular could compel the Bar Council to reform it. Whether or not such a challenge is ultimately pursued through the courts, the constitutional analysis strongly supports the reform agenda.

CHAPTER SEVENTEEN: THE ABOLITION OF THE TWO-YEAR LLB PROGRAM - LEGISLATIVE, PEDAGOGICAL, AND CONSTITUTIONAL ANALYSIS

Section 17.1: The Legislative History and Judicial Intervention

The two-year LLB program has been one of the most controversial features of Bangladeshi legal education for at least two decades. As noted in Part One, the Supreme Court's directions in the cases of Professor Syed Ali Naki v Bangladesh (2016) and Bangladesh Bar Council v A.K.M. Fazlul Kamir (2017) included a direction to shut down the two-year LLB (Pass) programs. These directions represented the highest judicial authority in Bangladesh expressing the view that the two-year program was incompatible with the quality standards required for legal education. The legal and institutional consequences of this judicial direction have been complex and contested, and the full story of how the direction has been (and in many cases has not been) implemented deserves careful analysis.

The 2016 High Court Division judgment in the Syed Ali Naki case was significant in several respects beyond its direction regarding the two-year LLB. The judgment engaged in a broad examination of the quality of legal education in Bangladesh, noting with concern the rapid and largely uncontrolled proliferation of private university law programs, the inadequate supervision of these programs by the University Grants Commission and the Bar Council, and the poor quality of instruction in many institutions. The Court's observation that the existing system was producing large numbers of law graduates who lacked the basic legal knowledge necessary for professional practice was a significant judicial statement that gave institutional weight to criticisms that had long been made by legal educators and the bar.

The 2017 Appellate Division judgment in the A.K.M. Fazlul Kamir case was equally significant. The Appellate Division, the highest court in Bangladesh, affirmed the High Court's concerns

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about legal education quality and issued further directions including the limitation of student intake in law programs. The specific direction regarding the two-year LLB was affirmed by the Appellate Division, giving it the authority of a final judgment of the highest court.

The constitutional analysis of the judicial directions on legal education is complex. The question of whether courts can and should issue directions regarding the design and structure of academic programs raises the separation of powers concern: is this an area reserved to the legislative and executive branches, or is it a matter of constitutional rights that courts are empowered to adjudicate? The answer in the Bangladeshi context, and in the context of the common law tradition of which Bangladesh is part, is that where the quality of legal education affects the constitutional right of access to justice (by affecting the quality of legal representation available to citizens), the courts have a legitimate interest in ensuring that minimum standards are maintained. The direction to shut down the two-year LLB is defensible on this basis as a proportionate response to a documented quality failure that affects the constitutional right of access to quality justice.

Section 17.2: Implementation Challenges and Institutional Resistance

The judicial directions regarding the two-year LLB program have not been fully implemented. Many institutions continue to operate programs that are functionally equivalent to the prohibited two-year LLB, either through formal renaming of the program or through other creative circumventions of the court's direction. This non-implementation is a serious challenge to the authority of the Supreme Court and to the rule of law more broadly.

The resistance to implementation comes from several sources. The private universities that offer two-year programs have a strong financial interest in maintaining them, because these programs are typically less expensive to operate than four-year programs (requiring fewer faculty, less infrastructure, and shorter duration) while generating comparable fee revenue. The students who are currently enrolled in two-year programs have a strong personal interest in completing them and receiving qualifications that are recognized. The faculty members who teach in these programs have an economic interest in their continuation. And some practitioners and academics have argued on principled grounds that alternative entry routes into the legal profession should be available to qualified graduates of other disciplines.

The way to address these institutional resistances is not to ignore the court's direction or to pretend that the quality problems it identified do not exist. The way to address them is to develop a genuine alternative to the two-year LLB that serves the legitimate purpose of providing a pathway for qualified graduates of other disciplines to enter the legal profession, while meeting the quality standards that the court's direction requires.

Section 17.3: The Design of a Replacement Pathway - A Graduate Entry Law Program

The replacement for the two-year LLB should be a genuinely rigorous graduate entry law program (GELP) that takes seriously both the promise and the problems of the existing two-year route. The GELP would be designed specifically for graduates of other disciplines who have demonstrated strong academic achievement in their prior degree and who wish to enter the legal

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profession. Its admission criteria, curriculum design, and assessment methods would all be calibrated to produce graduates who are genuinely prepared for professional legal practice.

The admission criteria for the GELP should be significantly more rigorous than those of most current two-year programs. A minimum academic achievement threshold (perhaps an upper second class in the prior degree, or a GPA equivalent) should be required. A national admission test, assessing verbal reasoning, analytical reasoning, and legal comprehension, should be used to select among qualified applicants. References from academic or professional supervisors should be required. And an interview, conducted by trained assessors using structured protocols, should assess the applicant's motivation, professional suitability, and potential.

These criteria are more demanding than those of the current two-year programs, and they would significantly reduce the number of applicants admitted. This reduction is both inevitable and desirable. The current system admits too many applicants who lack the academic foundation for rigorous legal study, and the result is graduates who are poorly prepared for practice. A smaller number of better-qualified students, receiving more intensive and better-resourced instruction, will produce better outcomes for the profession, for clients, and for the justice system.

The curriculum of the GELP should be intensively designed to cover the essential foundation of professional legal knowledge (criminal law, contract, tort, constitutional law, property, evidence, procedure) in an accelerated but rigorous way, supplemented by a strong practical skills component. The practical skills component should include clinical legal education, drafting exercises, advocacy training, negotiation, and professional ethics. The total duration of the GELP should be at least two full years of intensive study, and it should be assessed through multiple methods that test the full range of relevant competencies.

The key difference between the GELP and the current two-year LLB is quality assurance. The GELP should be subject to rigorous accreditation standards, including minimum staff-student ratios, minimum faculty qualifications, minimum library and resource requirements, and periodic external review. Institutions that cannot meet these standards should not be permitted to offer the program. This means that the GELP will be offered by fewer institutions than currently offer the two-year LLB, but those institutions will offer programs of genuinely high quality.

Section 17.4: The Role of the University Grants Commission in Legal Education Quality Assurance

The Bangladesh University Grants Commission (UGC) is the statutory body responsible for the regulation and quality assurance of university education in Bangladesh. Its role in legal education quality assurance is important but has been insufficiently active in the past. The Supreme Court's judicial directions on legal education were motivated in part by the UGC's failure to exercise adequate oversight of private university law programs.

The UGC's mandate in legal education requires strengthening in several respects. First, the UGC should establish clear and detailed minimum standards for law programs, covering faculty qualifications, curriculum content, assessment methods, library resources, and student-faculty ratios. These standards should be developed in consultation with the Bar Council, the legal

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academy, and the practicing profession, and they should be informed by international standards such as those published by the International Bar Association.

Second, the UGC should establish a system of periodic quality review for law programs, in which each program is externally reviewed every five to seven years against the established standards. Programs that fail to meet the standards should be required to develop and implement improvement plans, with the ultimate sanction of withdrawal of accreditation for programs that persistently fail.

Third, the UGC should publish comparative information about law programs, including student-to-faculty ratios, graduate employment outcomes, and the results of quality reviews, so that prospective students can make informed choices about where to study law. Transparency about quality is an important mechanism for creating incentives for quality improvement, because institutions that perform poorly in public rankings have reputational incentives to improve.

CHAPTER EIGHTEEN: THE NATIONAL LLB ADMISSION TEST - DESIGN, FAIRNESS, AND IMPLEMENTATION

Section 18.1: The Policy Case for a National Test

The introduction of a national admission test for entry into LLB programs is a reform proposal that has been discussed for several years in Bangladesh but has not yet been implemented. The policy case for such a test rests on several arguments that deserve systematic examination.

The first argument is standardization. In the current system, different law schools use different admission criteria and different admission processes. Some conduct their own written admission tests; others rely primarily on HSC results; others use interviews; and some combinations of these methods are used. This variation in admission criteria means that there is no common standard for assessing the academic preparedness of students admitted to law programs across different institutions. A national test would establish a common benchmark that all institutions could reference in their admission decisions.

The second argument is access. A national test, if well-designed and fairly administered, can provide students from less privileged educational backgrounds with a fair opportunity to demonstrate their ability alongside students from more privileged backgrounds. HSC results are heavily influenced by the quality of secondary education, which varies dramatically between urban and rural schools, between public and private schools, and between different regions of the country. A national test that measures reasoning ability rather than accumulated knowledge would provide a more reliable indication of students' potential than HSC results alone.

The third argument is quality signaling. If law schools are required to use the national test as a component of their admission criteria, and if the test results are publicly reported, this creates transparency about the academic quality of admitted cohorts at different institutions. This

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transparency helps prospective students identify the most academically demanding programs and creates competitive pressure on institutions to attract students with strong test scores.

The fourth argument is professional relevance. The Law School Admission Test (LSAT) in the United States, upon which a Bangladeshi national admission test might be modelled, is designed to measure skills that are directly relevant to success in legal education: analytical reasoning, logical reasoning, and reading comprehension. These are the foundational cognitive skills that legal education requires. A test that measures these skills provides more relevant information about a candidate's likely success in law school than a subject-specific knowledge test or a general academic aptitude test.

Section 18.2: Design of a National LLB Admission Test for Bangladesh

The design of a national LLB admission test for Bangladesh must be undertaken with care, taking into account both the specific cognitive demands of legal education and the specific educational and social context of Bangladesh. Simply transplanting the LSAT from the United States would be inappropriate; the test must be designed to be valid, fair, and appropriate for Bangladeshi candidates.

The core components of a well-designed Bangladeshi LLB admission test should include analytical reasoning, assessing the ability to understand and evaluate complex arguments; logical reasoning, assessing the ability to identify flaws in reasoning and draw valid conclusions; reading comprehension, assessing the ability to understand complex written passages and to answer questions based on them; and written analytical ability, perhaps through a short analytical writing component that requires candidates to analyze an issue and express their analysis clearly. None of these components require prior legal knowledge; they measure the foundational cognitive skills that a student needs to learn law effectively.

The test should be developed by a specialized test development organization with expertise in educational assessment, working in consultation with legal educators and practicing lawyers. The test should be piloted with representative samples of Bangladeshi students before introduction, to ensure that it is appropriately calibrated to the Bangladeshi educational context and does not systematically disadvantage particular demographic groups. The test should be offered at multiple testing centers across Bangladesh, not only in Dhaka, to ensure that students from all regions of the country can access it without unreasonable travel costs.

The administration of the test should be entrusted to an independent body that is insulated from political influence and that operates under clear accountability mechanisms. The test should be offered at least twice per year, to give students multiple opportunities to demonstrate their abilities. Scores should be valid for a reasonable period (perhaps two to three years) to allow students to apply to law school at the time of their choice after achieving a satisfactory score.

The relationship between the national test and law school admission decisions should be carefully calibrated. The test should be one factor among several in admission decisions, not the sole criterion. This is consistent with the practice in most jurisdictions that use standardized tests for professional school admission: the LSAT is one factor in American law school admission

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decisions, alongside undergraduate GPA, letters of recommendation, personal statements, and other information. A holistic admission process that uses the national test to identify minimum cognitive readiness thresholds, while also considering other factors, is more likely to admit students who are genuinely well-suited to legal study than a process that relies on test scores alone.

Section 18.3: The Fairness Critique and Equity Provisions

The introduction of a national admission test will inevitably raise concerns about fairness, specifically the concern that the test will systematically disadvantage students from less advantaged educational backgrounds, either because they have had less access to test preparation resources or because the test itself reflects cultural assumptions or linguistic patterns that are more familiar to advantaged students.

These concerns must be taken seriously. The literature on standardized testing and educational equity is extensive and shows clearly that standardized tests do correlate with socioeconomic background. The mechanisms for this correlation are multiple: advantaged students have better access to test preparation materials and coaching, their schools have provided better preparation in the foundational skills that the test measures, and some test content may reflect cultural assumptions that are more familiar to advantaged students.

The appropriate response to these concerns is not to abandon the national test but to accompany it with robust equity provisions. First, the test should be carefully analyzed for demographic bias before and after introduction, using differential item functioning (DIF) analysis to identify any test items that perform differently for different demographic groups in ways that are not justified by real differences in the relevant ability. Second, the government and the Bar Council should invest in test preparation resources that are freely available to all students, not only those who can afford private coaching. Third, a system of contextual admission should be developed, in which students' test scores are interpreted in the light of the socioeconomic context of their secondary education, giving appropriate weight to high performance in disadvantaged contexts.

The equity provisions should be designed from the outset as integral components of the national admission test system, not afterthoughts added in response to criticism after the system is introduced. A system that is perceived from the start as fair is more likely to be accepted and to achieve its quality objectives than a system that faces ongoing equity controversies.

CHAPTER NINETEEN: TRAINING FOR ADVOCATES - A COMPREHENSIVE FRAMEWORK FOR PROFESSIONAL FORMATION

Section 19.1: The Concept of Professional Formation and its Three Dimensions

The concept of professional formation, developed most influentially in the legal context by the Carnegie Report on legal education (Sullivan et al., 2007, cited in Part One) and subsequently elaborated by many legal education scholars, provides the most useful theoretical framework for

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thinking about how aspiring lawyers should be prepared for professional practice. Professional formation involves three distinct but deeply interconnected dimensions: intellectual formation (the development of the legal mind, its analytical capacity, its command of legal doctrine and method), practical formation (the development of the skills of professional practice), and ethical formation (the development of the professional identity, values, and judgment that enable a lawyer to act with integrity in the complex and often morally challenging situations of legal practice).

The Carnegie Report argued, powerfully and persuasively, that American legal education was excellent at intellectual formation, adequate at practical formation, and deeply inadequate at ethical formation. Bangladeshi legal education, by contrast, is mediocre at intellectual formation, poor at practical formation, and almost entirely absent from ethical formation. The challenge for Bangladesh is therefore more comprehensive than the challenge for the United States: it requires fundamental improvement across all three dimensions simultaneously.

This Chapter focuses on the practical formation dimension, specifically the system of professional training that bridges the gap between academic legal education and entry into independent professional practice. The intellectual and ethical dimensions are discussed in the chapters on legal education reform and professional ethics.

Section 19.2: A National Pupillage and Training Framework

The reform of the system of practical training for new advocates should be organized around the development of a National Pupillage and Training Framework (NPTF) that sets clear, enforceable minimum standards for the practical training that every new advocate must receive before being authorized to practice independently.

The NPTF would be developed by the regulatory authority (the reformed Bar Council or the proposed LSRAB), in consultation with the practicing bar, legal educators, and representatives of clients and civil society. It would specify: the minimum period of supervised practice required before independent practice; the specific competencies that must be demonstrated during the supervised period; the qualifications and obligations of supervising advocates; the minimum content and frequency of formal training events (seminars, workshops, skills exercises) that must be attended; and the assessment procedures by which the satisfaction of training requirements is verified.

On the question of minimum period, the international comparison strongly suggests that a minimum of one year of full-time supervised practice (or its part-time equivalent) is necessary to provide adequate practical formation. The English barrister's pupillage is twelve months; the English solicitor's training period under the Legal Practice Course and Training Contract system is approximately two years. In Australia and Canada, the articling or practical legal training requirement is typically twelve to eighteen months. A minimum of twelve months of supervised practice for Bangladeshi advocates would be in line with these international norms and would represent a significant improvement over the current essentially unregulated system.

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The qualifications and obligations of supervising advocates are a critical element of the framework. Currently, senior advocates take on junior advocates as pupils on entirely informal terms, with no formal qualification requirement for supervisors, no defined minimum obligations, and no monitoring of the quality of the training provided. The NPTF should establish minimum qualifications for supervisors: a minimum number of years in practice, a minimum standard of professional conduct record, and the completion of a supervisor training program that prepares experienced practitioners to provide effective mentoring. The obligations of supervisors should include providing the pupil with exposure to a defined range of practice activities, providing regular feedback on performance, completing a formal progress assessment at intervals during the training period, and reporting concerns about the pupil's conduct or performance to the regulatory authority.

The minimum content of formal training events should include, at a minimum, professional ethics and responsibility, legal research and writing, advocacy skills, client management, financial management of practice, and an introduction to the Bar Council's regulatory framework and complaints process. These events should be accredited by the regulatory authority and offered by LETI or by other accredited training providers. They should be offered in locations across Bangladesh, not only in Dhaka, to reduce the burden on advocates practicing outside the capital.

Section 19.3: Clinical Legal Education and Its Role in Professional Training

Clinical legal education, in which law students and newly qualified advocates work under supervision to represent real clients in real cases, is one of the most effective methods of practical legal training and deserves a central place in the reformed professional training framework for Bangladesh.

The theoretical foundation for clinical legal education draws on John Dewey's learning theory, specifically his concept of "learning by doing" developed in Experience and Education (1938). Dewey argued that genuine learning occurs through the active engagement with real problems, not merely through the passive absorption of transmitted information. Applied to legal education, this means that the most effective way to develop professional competence is to engage with real legal problems in a supervised setting, reflecting carefully on the experience and extracting transferable learning.

Clinical legal education has a long and distinguished history in the United States, where law school clinics have been a significant part of legal education since the 1960s. The first law school legal aid clinic was established at the University of Southern California in 1959, and clinical programs have since spread to virtually every accredited American law school. American law school clinics collectively represent one of the largest systems of legal aid provision in the world, handling millions of cases annually, many of them for clients who would otherwise have no access to legal representation.

In Bangladesh, clinical legal education is at a very early stage of development. A small number of law schools have established legal aid clinics, and some NGOs with legal programs have developed clinical models that involve law students in legal aid provision. But clinical legal

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education remains marginal to the mainstream of Bangladeshi legal education, and it has not been systematically incorporated into either the undergraduate LLB curriculum or the post-qualification training framework.

The development of a national system of legal aid clinics attached to law schools, providing both educational opportunities for students and advocates in training and legal services to clients who cannot afford private representation, would serve multiple important public interest objectives simultaneously. It would improve the practical training of law students and newly qualified advocates. It would extend legal services to underserved communities. It would generate valuable experience and data about legal needs that can inform law reform and access-to-justice policy. And it would contribute to the development of a culture of pro bono service and social responsibility in the legal profession.

The revised Legal Aid Ordinance of July 2025, issued by the interim government to expand legal assistance, represents an important recent development in this area. The ordinance's expansion of the legal aid framework creates a context in which law school clinics could play an increasingly important role in the delivery of legal aid services, supplementing the work of the government's legal aid bodies and NGO legal aid providers. The integration of clinical legal education with the reformed legal aid system is a policy synergy that deserves active development.

Section 19.4: The Training of Advocates in Specialized Areas - Designing Depth

Part One briefly introduced the concept of legal specialization as an important structural reform of the legal profession. In this Chapter, we examine in more detail how specialization-oriented training should be designed and delivered.

The development of genuine specialization in the Bangladeshi legal profession requires first the identification of the areas of practice in which specialization is most needed. Several areas stand out as priorities given the structure of the Bangladeshi economy and the character of legal needs in the country.

Corporate and commercial law is the most commercially significant area of specialization. As the Bangladeshi economy has grown and become more complex, with the development of a significant garment export industry, a growing banking and financial sector, and increasing foreign direct investment, the demand for sophisticated corporate and commercial legal advice has increased substantially. But the supply of Bangladeshi lawyers who are genuinely expert in corporate transactions, securities regulation, mergers and acquisitions, project finance, and international commercial arbitration has not kept pace with demand, which means that Bangladeshi corporations and foreign investors often rely on foreign law firms or on internationally-trained Bangladeshi lawyers for their most complex commercial legal work.

Environmental law is an increasingly important specialization given Bangladesh's acute vulnerability to climate change, its significant environmental challenges including river pollution, deforestation, and industrial contamination, and the developing body of national and international environmental law that bears on these challenges. Environmental law in Bangladesh involves not only statutory interpretation and litigation but also administrative law (challenging

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regulatory decisions of environmental authorities), constitutional law (invoking the right to a healthy environment as an aspect of the right to life), and international law (engaging with Bangladesh's obligations under the Paris Agreement and other international environmental instruments). Training advocates to specialize in environmental law would serve both private client interests (businesses that need advice on environmental compliance and liability) and public interest objectives (advocacy for communities affected by environmental damage).

Family law, including Muslim personal law and Hindu personal law, is an area of practice in which the quality and consistency of legal representation varies enormously, and in which poorly informed advocacy can have devastating consequences for vulnerable clients, particularly women and children. Family law practitioners need not only technical knowledge of the relevant legal rules but also understanding of the psychological and social dimensions of family disputes, skills in mediation and alternative dispute resolution, and sensitivity to the particular vulnerabilities of their clients. A specialization program in family law would help to develop a cadre of practitioners with this combination of legal knowledge and human sensitivity.

Human rights and public law is an area in which Bangladesh has particular need for specialized practitioners, given both the richness of its constitutional jurisprudence and the persistence of significant human rights challenges. The practice of public law requires deep knowledge of constitutional law, administrative law, international human rights law, and the specific procedural rules governing writ proceedings before the High Court Division. It also requires the courage and independence of mind to challenge powerful governmental and non-governmental actors in the public interest. The development of a specialization program in human rights and public law, possibly in partnership with international human rights organizations and international law schools, would help to build the cadre of dedicated public lawyers that Bangladesh needs.

CHAPTER TWENTY: THE PROFESSIONAL DOCTORAL PROGRAM IN LAW - A DETAILED PROPOSAL

Section 20.1: Why Bangladesh Needs a Professional Doctorate in Law

The argument for a professional doctoral program in law in Bangladesh rests on a diagnosis of the state of Bangladeshi legal scholarship that was introduced in Part One and deserves further development here. The fundamental problem is that Bangladesh lacks a critical mass of legally trained scholars who combine deep practical experience with the research skills and the intellectual engagement necessary to produce the high-quality legal scholarship that the legal system needs.

The standard PhD in Law, as offered by the University of Dhaka and some other institutions, is primarily an academic qualification for those seeking university positions. Its graduates are trained as academic researchers and teachers, not as practitioner-scholars whose research is informed by deep engagement with the practical challenges of the legal system. The PhD is also typically pursued by relatively young scholars who lack the practice experience that would make

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their research most practically relevant. The result is a body of academic legal scholarship that is somewhat detached from the practical realities of legal practice and that is not always taken seriously by the practicing profession.

The professional doctorate in law, by contrast, is designed for experienced practitioners who have accumulated the practice experience that makes their research questions genuinely important and their research findings genuinely relevant to the reform of the legal system. The doctoral research of a senior advocate who has spent twenty years practicing commercial law and who undertakes a professional doctorate on the regulation of foreign investment in Bangladesh will be informed by a depth of practical understanding that no PhD student fresh from LLB can match. And the results of that research will be taken seriously by practitioners and policymakers in a way that purely academic scholarship often is not.

The global resurgence of professional doctoral programs in law in recent years reflects a growing recognition of this value. The United States, Australia, Canada, the United Kingdom, South Africa, and numerous other countries have developed professional doctorate programs in law (variously designated as J.S.D., LL.D., D.Jur., D.L.P., or D.Law) that attract experienced practitioners and produce research of genuine practical relevance. Bangladesh should follow this global trend by establishing one or more professional doctorate programs at its leading law schools.

Section 20.2: Structure and Design of the Professional Doctorate

The professional doctorate in law at a Bangladeshi institution should be designed to achieve three primary objectives: to produce high-quality, practically-relevant legal research; to develop the research skills and habits of mind of experienced practitioners; and to contribute to the development of a community of practitioner-scholars who can bridge the gap between academic legal scholarship and legal practice.

To achieve these objectives, the program design should include several key elements. The first is a substantial research component: a doctoral thesis of approximately 60,000 to 80,000 words that makes an original contribution to knowledge in an area of law of direct relevance to the Bangladeshi legal system. The thesis should demonstrate command of the relevant legal authorities, engagement with the existing academic literature, original empirical or theoretical analysis, and practical implications for law reform or legal practice.

The second element is a structured taught component that provides candidates with the research skills they need to complete the thesis and with the intellectual framework within which their research is situated. This taught component should cover legal research methodology, legal theory and jurisprudence, comparative and international legal perspectives on the candidate's research area, and research ethics. The taught component should be delivered over the first year of the program and should be assessed through essays or other work that develops the candidate's research skills while building toward the thesis.

The third element is close and sustained supervision by a faculty supervisor who has expertise relevant to the candidate's research area and experience in doctoral supervision. The supervisor

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relationship is the most important single determinant of doctoral student success, and the quality of supervision depends on the supervisor's expertise, availability, and supervisory skills. Law schools offering the professional doctorate should invest in the development of their faculty's supervisory capacity and should ensure that supervisors have adequate time to devote to this important function.

The fourth element is community: regular research seminars, workshops, and peer discussion groups in which doctoral candidates can share their work in progress, receive feedback from faculty and peers, and develop their sense of scholarly community. Isolation is one of the greatest challenges of doctoral study, and the professional doctorate program should be deliberately designed to mitigate it.

The fifth element is a clear and fair examination process. The thesis should be examined by a panel that includes at least one internal examiner (a faculty member of the host institution) and at least one external examiner (a senior scholar from another institution, ideally with expertise in the relevant area of law). The examination should include both written assessment of the thesis and a viva voce, a formal oral defence of the thesis before the examination panel. The criteria for the award should be clearly defined and publicly available.

Section 20.3: Topics for Professional Doctoral Research in Bangladesh

To make the professional doctorate proposal concrete and to illustrate its potential contribution to Bangladeshi legal development, it is useful to identify specific research areas that would be particularly valuable for practitioner-scholars to investigate.

The reform of the Bangladesh Bar Council itself is an obvious and important area for professional doctoral research. A practitioner-scholar who has deep experience of the Bar Council's operations, who can draw on both personal experience and systematic empirical investigation, and who has the theoretical tools to situate the Bangladeshi experience within the comparative literature on professional regulation, could produce research that is genuinely transformative in its impact on the reform debate.

The jurisprudence of the International Crimes Tribunal Bangladesh is another area of enormous importance and insufficient scholarly engagement. The ICT-BD, which has tried cases arising from the atrocities of the 1971 liberation war, has been one of the most controversial legal institutions in Bangladesh's post-independence history. Its proceedings have raised profound questions about the application of international criminal law, the standards of due process required in transitional justice tribunals, the relationship between domestic and international criminal law, and the political dimensions of accountability for historical atrocities. With the ICT-BD recently finding Sheikh Hasina and co-defendants guilty of crimes against humanity in November 2025, these questions have taken on renewed political and legal urgency. A professional doctoral study of the ICT-BD's jurisprudence, examining its development, its relationship to international standards, and its legacy for transitional justice in Bangladesh and beyond, would be a major contribution to both Bangladeshi legal scholarship and the international literature on transitional justice.

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The constitutional changes resulting from the July National Charter and the February 2026 referendum present another area of great scholarly importance. The proposed introduction of a bicameral parliament, the strengthening of judicial independence, the expansion of fundamental rights, and the imposition of term limits on the Prime Minister are all changes that will require extensive legal analysis, constitutional interpretation, and comparative study. Practitioner-scholars who have deep knowledge of the existing constitutional system and who can bring the theoretical tools of comparative constitutional law to bear on the new provisions will be uniquely placed to make important scholarly contributions in this area.

Property law, land tenure, and land administration are areas of enormous practical importance in Bangladesh and inadequate scholarly attention. The land administration system in Bangladesh is characterized by pervasive corruption, inadequate record-keeping, widespread title disputes, and significant vulnerability of women and marginalized communities in the assertion of land rights. A practitioner-scholar with experience in land law and property practice could make an important contribution by investigating the legal dimensions of land administration reform and developing proposals for legislative and administrative improvement.

CHAPTER TWENTY-ONE: THE IMPACT OF CONSTITUTIONAL REFORM ON THE LEGAL PROFESSION AND THE BAR COUNCIL

Section 21.1: The July National Charter and the Legal System

The July National Charter of 2025 and the constitutional changes approved in the February 2026 referendum have created a transformed constitutional context for the legal system and the legal profession in Bangladesh. Understanding this transformation and its implications for the Bar Council and legal education reform is essential for anyone engaging with the reform agenda in the current political environment.

The most directly significant constitutional reform for the legal profession is the strengthening of judicial independence. The July National Charter included proposals for the financial autonomy of the judiciary, for a new mechanism for the appointment of Supreme Court judges (replacing the largely executive-controlled process with a more structured, multi-stakeholder appointment commission), and for enhanced accountability of judges. The Judiciary Reform Commission's February 2025 report, which formed the basis for the Charter's judicial reform provisions, recommended the formation of a nine-member Judicial Appointments Commission led by the Chief Justice, with members including representatives of the bar, the legal academy, and civil society, as well as serving judges.

These judicial independence measures are critically important for the Bar Council's reform for reasons that may not be immediately obvious. The Bar Council's regulatory function, particularly its disciplinary function, is ultimately backstopped by the judiciary: advocates who are disciplined by the Bar Council can appeal to the High Court Division, and the courts' willingness and ability to exercise independent and rigorous oversight of Bar Council decisions is an important external check on the Bar Council's exercise of its powers. If the judiciary is not

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genuinely independent, the judicial check on Bar Council decisions is not reliable, and the accountability framework for professional regulation is correspondingly weaker.

The new mechanism for Supreme Court judicial appointments, involving the Judicial Appointments Commission described in the Judiciary Reform Commission's report and the Supreme Court Judges Appointment Ordinance of January 2025, is therefore a precondition for effective legal professional regulation, not merely a parallel reform. A genuinely independent judiciary, appointed through a transparent and merit-based process and not subject to executive pressure in the exercise of judicial functions, is an essential element of the institutional environment within which effective professional regulation can occur.

The Judiciary Reform Commission's recommendation for the establishment of permanent High Court benches at every divisional city is particularly significant for access to justice and for the distribution of the legal profession across Bangladesh. Currently, all High Court work takes place in Dhaka, which means that anyone outside Dhaka who wishes to bring a writ petition, appeal a High Court judgment, or access the range of remedies available before the High Court must either travel to Dhaka or engage a Dhaka-based lawyer. The establishment of divisional High Court benches would shift some of this work to regional centres, creating demand for High Court level legal practitioners outside Dhaka and potentially addressing the chronic concentration of high-quality legal services in the capital.

Section 21.2: The Constitutional Framework for Fundamental Rights and Its Implications for the Profession

The expansion of fundamental rights contemplated by the July National Charter is directly relevant to the legal profession in several ways. The Charter's proposals include the right to uninterrupted internet access (which has implications for the delivery of legal services and legal information) and the right to protection of personal information (which has implications for the privacy obligations of legal practitioners in handling client information). More broadly, the Charter's commitment to expanded fundamental rights creates a larger constitutional landscape within which lawyers will practice, a landscape that requires more sophisticated constitutional knowledge and more active constitutional advocacy.

The deletion of Articles 7A and 7B from the Constitution, approved as part of the constitutional reform package, is significant for constitutional legal practice. Articles 7A and 7B, introduced by the Fifteenth Amendment in 2011, had made it a constitutional offence to "aid, abet or conspiracy" in the overthrow of the Constitution and had imposed severe restrictions on constitutional change outside the amendment process. Their deletion removes provisions that had been criticized as potentially restricting legitimate constitutional advocacy and academic debate. For constitutional lawyers, this deletion restores a more open constitutional space in which argument about the fundamental law of the state is less constrained.

The replacement of the Mujibist four principles (nationalism, socialism, democracy, secularism) with the new principles of equality, human dignity, social justice, pluralism, and democracy as the fundamental principles of the Constitution represents a philosophical reorientation of the constitutional order that has significant implications for constitutional jurisprudence.

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Constitutional lawyers will need to develop a new jurisprudence for the interpretation and application of these new principles, drawing on the existing body of Bangladeshi constitutional case law where it remains applicable, on the comparative literature in countries with similar constitutional principles (particularly South Africa, which adopted a similar set of foundational constitutional values in its 1996 Constitution), and on the philosophical literature on the concepts of dignity, pluralism, and social justice.

Section 21.3: The Post-Election Political Context and Reform Prospects

The general election of February 12, 2026, which was won by the Bangladesh Nationalist Party (BNP), and the simultaneous referendum, which approved the July National Charter with a sixty-eight percent majority, have created a new political context for legal reform. The BNP government will now be responsible for implementing the constitutional changes mandated by the referendum, including the judicial independence provisions and the other legal system reforms, while also managing the complex constitutional politics of the Charter's implementation.

The BNP government's initial refusal to participate in the Constitutional Reform Council, refusing to take the oath as Charter Council members at the inaugural parliamentary session, created immediate uncertainty about the implementation timeline. However, as observers have noted, the BNP is "politically obligated to implement the agreed reforms" given the referendum result, even if it objects to specific implementation mechanisms. The legal profession, and the Bar Council in particular, has an important role to play in advocating for the faithful and timely implementation of the constitutional reforms, particularly those relating to judicial independence.

The announcement of Bar Council elections for May 19, 2026, less than two months after the general election, means that the new Bar Council will be elected in a political environment that is in flux. The composition of the new Bar Council will significantly influence the pace and direction of professional self-governance reform in the immediate future. Whether the new election produces a Bar Council that is genuinely committed to professional reform and regulatory excellence, or whether it simply replicates the pattern of political capture under the new political alignment, will be one of the most important early indicators of whether the reform moment of 2024-2026 has genuinely transformed the legal institutional landscape.

The legal profession can and should contribute actively to the reform process that the July National Charter has mandated. Lawyers are uniquely positioned to understand the technical legal dimensions of constitutional reform, to identify the risks of poorly drafted implementing legislation, to advocate for the rule of law and judicial independence, and to represent the interests of citizens in ensuring that the constitutional changes are implemented in a way that genuinely serves the public interest rather than the interests of the new political establishment. This is exactly the kind of civic and professional function that a reformed and genuinely independent Bar Council should be performing.

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CHAPTER TWENTY-TWO: ACCESS TO JUSTICE, THE BAR COUNCIL, AND THE POLITICS OF LEGAL AID

Section 22.1: The Access to Justice Crisis and the Profession's Responsibility

Access to justice is perhaps the most fundamental challenge facing the Bangladeshi legal system and, by implication, the Bangladesh Bar Council as the regulatory body of the legal profession. The formal legal system of Bangladesh is, for the great majority of its citizens, effectively inaccessible. The cost of legal representation is beyond the means of the majority of the population. The geographic concentration of lawyers in Dhaka and other major cities leaves large rural populations severely underserved. The complexity and delay of court proceedings make formal legal processes unattractive even for those who can afford to access them. And the information asymmetry between lawyers and clients makes it difficult for citizens to assess the quality of legal advice they receive or to enforce their legal rights without professional assistance.

The scale of the access to justice problem in Bangladesh can be quantified, at least approximately. The Bangladesh Population and Housing Census indicates a population of approximately 170 million people. The number of enrolled advocates on the Bangladesh Bar Council's roll is approximately 60,000-70,000 (though the number of actively practicing advocates is considerably smaller). This gives a very rough ratio of approximately one advocate for every 2,500 to 3,000 citizens, which is extremely low by international standards. But the geographic distribution of this ratio is even more unfavorable than the national average suggests: the vast majority of lawyers are in Dhaka and other major cities, while in many rural districts the ratio of lawyers to population is far lower.

The revised Legal Aid Ordinance of July 2025, which expanded the framework for government-funded legal assistance, represents an important recent step in addressing the access to justice crisis. But government legal aid alone is insufficient to address the scale of the problem. International experience consistently shows that effective access to justice requires a combination of government legal aid, pro bono legal services from private practitioners, law school clinics, community legal education, and informal legal support mechanisms such as legal empowerment programs. The legal profession, through the Bar Council, has an important role to play in organizing and promoting the pro bono and community legal service contributions that can supplement government legal aid.

Section 22.2: The Pro Bono Obligation and its Reform

The obligation of lawyers to provide pro bono (free or reduced-cost) legal services to clients who cannot afford to pay is one of the oldest and most fundamental traditions of the legal profession. In the common law tradition, the idea that lawyers owe an obligation of public service as a condition of their privileged access to the courts goes back at least to the medieval English concept of the lawyer as a servant of justice, not merely an agent of clients. In the Islamic legal tradition, the obligation of the scholar and the educated professional to assist those who lack knowledge and access to justice is embedded in the concept of fard al-kifaya, the collective

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obligation that falls on those with the relevant knowledge to meet social needs that would otherwise go unmet.

In Bangladesh, there is no formal pro bono requirement for advocates. The Canons of Professional Conduct and Etiquette encourage lawyers to provide assistance to the poor, but there is no mandatory minimum number of pro bono hours or cases, no reporting requirement, and no mechanism for verifying or enforcing pro bono obligations. The result is that pro bono service in Bangladesh is entirely voluntary and irregular, with some advocates contributing significantly to legal aid and others contributing nothing.

The introduction of a formal pro bono requirement for Bangladeshi advocates, as part of the reformed professional framework, would be a significant step toward addressing the access to justice crisis and toward developing the culture of public service that a reformed professional identity requires. The specific design of a mandatory pro bono requirement must balance several considerations: it must be substantial enough to make a meaningful difference to access to justice, it must be fair across the profession (not creating disproportionate burdens on junior advocates who are already financially pressed), and it must be practically enforceable.

A mandatory requirement of a minimum number of pro bono hours per year (perhaps 20 to 30 hours for most advocates, with a higher requirement for senior advocates), combined with a reporting mechanism and an option for those who cannot personally provide services to contribute financially to a fund that supports legal aid organizations, would be a reasonable starting point. The Bar Council (or the new regulatory authority) would be responsible for monitoring compliance and would maintain a public register of pro bono contributions.

Section 22.3: Legal Technology, Access to Justice, and Professional Regulation

The rapid development of legal technology is creating both new opportunities and new challenges for access to justice and professional regulation in Bangladesh and globally. Artificial intelligence tools capable of providing basic legal information, drafting simple documents, and identifying relevant legal authorities are already commercially available in many jurisdictions and are beginning to be deployed in developing countries. The implications for the legal profession, for access to justice, and for professional regulation deserve serious and sustained attention.

On the positive side, legal technology has the potential to dramatically reduce the cost of basic legal services and to make legal information available to citizens who currently have no access to professional legal advice. A well-designed AI-powered legal information platform that can answer basic legal questions, identify relevant laws and rights, and help citizens navigate basic legal processes could serve the access to justice needs of millions of Bangladeshis who cannot afford professional legal advice. The right to uninterrupted internet access, included as a fundamental right in the July National Charter's constitutional reform proposals, potentially provides a constitutional foundation for ensuring that citizens can access such digital legal services.

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On the negative side, legal technology poses significant risks for professional regulation. AI-powered legal tools can provide incorrect information, fail to understand context, or be inadequate for complex legal situations where professional judgment is required. If unregulated, legal technology services could create a two-tier legal system in which the poor receive AI-generated legal assistance of uncertain quality while the wealthy receive genuine professional advice. And legal technology services that are provided by entities that are not subject to Bar Council regulation may operate without the professional standards, the ethical obligations, and the client protection mechanisms that professional regulation is supposed to ensure.

The Bar Council (or the reformed regulatory authority) must develop a framework for the regulation of legal technology services that is calibrated to the specific risks and benefits of different technologies and service models. Simple legal information services that provide general information about the law, without purporting to give individualized legal advice, may be appropriate to regulate lightly or not at all. AI-powered tools that generate individualized legal advice or draft legal documents for specific legal situations raise more serious regulatory concerns and may need to be subject to professional standards requirements, either through licensing of the technology providers or through requirements that AI-generated content be reviewed by a qualified human professional before being relied upon.

CHAPTER TWENTY-THREE: THE REFORM OF THE BAR COUNCIL'S FINANCIAL GOVERNANCE

Section 23.1: The Financial Resources of the Bar Council and their Adequacy

Effective institutional performance requires adequate resources, and the Bangladesh Bar Council's ability to perform its regulatory, educational, and representational functions depends fundamentally on the financial resources available to it. The sources of Bar Council revenue, the adequacy of those resources for the institution's mandated functions, and the financial governance and accountability of the institution are all matters that deserve careful analysis.

The Bar Council's principal sources of revenue are enrollment fees (charged to candidates for the enrollment examination), annual subscription fees charged to enrolled advocates, fees for legal documents and services provided through the Bar Council, and government grants. The enrollment fee revenue is substantial given the large number of candidates who sit for the examination each year. But whether the total revenue is adequate for the Bar Council's mandated functions, including the operation of LETI, the administration of the disciplinary system, the maintenance of the Bar Council's offices and staff, and the representation of the profession's interests at national and international level, is questionable.

The financial governance of the Bar Council has not always been characterized by the transparency and accountability that public trust requires. The Finance Committee of the Bar Council is responsible for financial oversight, but the extent to which it exercises effective oversight, with regular financial reporting, independent audit, and public disclosure of financial information, has been inadequate. The Daily Star's November 2024 analysis of Bar Council

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reform noted the inadequacy of the financial framework for supporting young advocates and called for reform of the Benevolent Fund, but the broader financial governance issues go well beyond the Benevolent Fund.

The reform of Bar Council financial governance should include mandatory annual external audit by an independent auditing firm, public disclosure of audited accounts, a formal budget process with public consultation on major financial decisions, and clear financial management policies and procedures. These measures are standard requirements of good governance for any public body and should be non-negotiable elements of Bar Council reform.

Section 23.2: A New Model of Bar Council Financing

The financial model of the Bar Council should be rethought as part of the broader governance reform. Several alternative financing models deserve consideration.

The first option is to increase enrollment fees and annual subscriptions to a level that fully funds the Bar Council's expanded regulatory and educational functions. The advantage of this approach is that it makes the Bar Council financially self-sufficient and not dependent on government grants. The disadvantage is that it increases the financial burden on advocates, particularly junior advocates who are already financially pressed.

The second option is to increase government funding of the Bar Council, on the basis that the regulation of the legal profession is a public function that the state should help to finance. The advantage is that it does not increase the burden on advocates. The disadvantage is that government funding can create a dependency relationship that compromises the Bar Council's independence.

The third option, and probably the best, is a mixed model that combines modest increases in enrollment fees and subscriptions (with exemptions or reductions for junior advocates in their first years of practice) with a restructured government contribution that is provided as a grant for specific regulatory functions (such as legal education accreditation and the administration of the disciplinary system) without giving the government any control over the exercise of those functions. This model is analogous to the relationship between the Legal Services Board and the approved regulators in England and Wales, where the LSB's budget is approved by the Lord Chancellor but the LSB's regulatory decisions are independent of the government.

CHAPTER TWENTY-FOUR: PROFESSIONAL ETHICS, LEGAL CULTURE, AND THE LONG REFORM

Section 24.1: The Culture of the Bangladeshi Bar and the Challenge of Cultural Change

The most technically sophisticated reform proposals will fail if they are not accompanied by cultural change within the legal profession. Legal culture, the shared values, assumptions, norms, and practices that characterize the legal profession, is perhaps the most important determinant of

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how legal institutions actually function. It is also the most difficult to change through deliberate policy intervention, because culture is embedded in the everyday practices, the informal norms, the stories and traditions, and the professional socialization processes that new members of the profession undergo.

Lawrence Friedman, the American legal sociologist whose The Legal System: A Social Science Perspective (1975) first introduced the concept of legal culture to mainstream legal sociology, distinguished between "external legal culture" (the attitudes of the general public toward law and legal institutions) and "internal legal culture" (the attitudes and norms of legal professionals themselves). Both dimensions are important in Bangladesh. The external legal culture is characterized by significant distrust of the formal legal system, widespread belief that the courts are slow and expensive, and reliance on informal dispute resolution mechanisms rather than formal legal processes. The internal legal culture is characterized by, among other things, strong professional solidarity, resistance to external criticism, politicization, and in many contexts a tolerance for practices that fall below the ethical standards formally required by the Canons of Professional Conduct.

The internal legal culture of the Bangladeshi bar has several specific features that create obstacles to reform. First, there is a strong norm of seniority, in which junior advocates defer to seniors in virtually all matters, which can make it difficult for junior advocates to challenge unethical instructions or to report professional misconduct by senior practitioners. Second, there is a culture of collegiality that can shade into complicity: lawyers do not criticize each other publicly, complaints against advocates are seen as acts of disloyalty to the profession, and the interests of the bar as a collective are prioritized over the interests of individual clients or the public. Third, there is a culture of political engagement that makes it difficult for professional institutions to maintain the distance from political controversy that effective regulation requires.

Changing these cultural features requires sustained engagement over a long period through multiple channels. Professional education, including the ethical formation component of legal education discussed earlier, is one important channel: a generation of lawyers who are trained from the beginning of their legal education to take professional ethics seriously, to challenge unethical practices, and to understand the public interest dimensions of their professional role will gradually change the culture of the bar. Leadership by example is another important channel: if the Bar Council (or the new regulatory authority) is led by practitioners who are genuinely committed to professional integrity and who demonstrate that commitment through their own behavior, this creates a model that others can follow. The active use of the disciplinary system to sanction even senior and politically connected practitioners for genuine professional misconduct is another important signal: it demonstrates that the rule of law applies to lawyers as much as to anyone else, and that professional privilege does not confer immunity from accountability.

Section 24.2: Professional Identity and the Lawyer's Public Role in Democratic Society

The reform of the Bar Council and of legal education is ultimately about developing a clearer and more demanding conception of what it means to be a lawyer in a democratic society. The professional identity of the Bangladeshi lawyer has historically been somewhat ambiguous:

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lawyers have seen themselves primarily as service providers to paying clients, with a secondary identity as officers of the court and a largely notional identity as servants of justice and defenders of the rule of law. A reformed professional identity would put the commitment to justice, the rule of law, and the public interest at the center of professional self-understanding, rather than treating these as secondary considerations subordinate to client service and professional self-interest.

This reformed professional identity is not a utopian fantasy. It is the professional identity that the best lawyers in Bangladesh already embody, and it is the identity that the best legal education systems in the world explicitly cultivate. The Carnegie Report's call for "formation of professional identity" as a central objective of legal education is a call for exactly this kind of transformed self-understanding. The development of a cadre of Bangladeshi lawyers who are committed to justice, who take seriously their obligations to the administration of the legal system and to the rule of law, and who regard the practice of law as a form of public service as well as a commercial enterprise, would transform not only the legal profession but the legal system and, through the legal system, the quality of governance and the protection of rights in Bangladesh.

The July Uprising of 2024 and the reform process that it generated created, among other things, a renewed sense of civic possibility in Bangladesh: the sense that institutions can be changed, that young people can hold power accountable, and that genuine democratic transformation is possible. The legal profession should be part of that civic renewal, not merely a passive observer of it. The Bar Council and the legal academy have the resources and the platform to contribute actively to building the institutional foundations of the new Bangladesh that the uprising envisioned. This textbook is one contribution to that project, but ultimately the project requires the active engagement of the profession itself.

CHAPTER TWENTY-FIVE: A COMPREHENSIVE REFORM AGENDA - SYNTHESIS AND LEGISLATIVE PROPOSALS

Section 25.1: The Proposed Legal Practitioners and Bar Council Reform Ordinance

The reforms analyzed in this Part cannot be implemented piecemeal through administrative action and court orders. They require comprehensive primary legislation that replaces the Bangladesh Legal Practitioners and Bar Council Order 1972 with a new legal framework designed for the twenty-first century. This section outlines the principal elements of such a legislative framework, which might be designated the Legal Practitioners and Professional Regulation Act (or Ordinance).

The foundational change required is the transformation of the Bangladesh Bar Council from a self-regulatory body with mixed governmental and professional control into a genuinely independent regulatory institution with a clear public interest mandate. This transformation requires both a new governance structure and a new legislative mandate.

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The legislative mandate should be clearly stated: the regulatory body exists to ensure that the legal profession serves the public interest by maintaining the competence and integrity of its members, by making legal services accessible to all citizens regardless of means, by promoting the independence of the legal profession from improper influence, and by contributing to the development of the legal system in the service of justice and the rule of law. Every specific function of the regulatory body should be understood as serving this broader mandate, and the body should be accountable for how effectively its exercise of specific functions serves the mandate.

The governance structure should provide for a Board of Governance that includes both professional and lay members, with lay members constituting a significant proportion (at least one-third) of total membership. The lay members should be appointed by a process that is independent of both the profession and the government, perhaps through a Parliamentary Committee on Legal Services or through an independent appointments commission. The professional members should be selected through a process that assesses regulatory competence rather than political loyalty, perhaps through a combination of election by the profession and validation by the lay members of the Board.

The separation of regulatory and representative functions should be formally institutionalized in the legislation. The legislation should establish a separate Legal Practitioners' Association as the representative body for the profession, distinct from the regulatory body. The Association would be a democratic organization elected by the profession to advocate for the profession's interests, while the regulatory body would be governed by the mixed Board described above and would focus exclusively on regulatory functions.

The enforcement powers of the regulatory body should be substantially strengthened. The body should have clear powers to investigate complaints, to compel the production of documents and information, to impose interim suspensions pending disciplinary proceedings, and to impose a range of sanctions from formal warnings to fines to suspension to disbarment. The sanctions should be proportionate to the gravity of the misconduct and should be guided by published sentencing guidelines that promote consistency and predictability.

The enrollment examination provisions of the legislation should mandate a competence-based qualifying framework, administered by an independent assessment body, that assesses candidates across the full range of competencies required for professional practice. The legislation should require the assessment body to publish its assessment framework, to assess candidates through multiple methods, and to provide candidates with written feedback on their performance and a meaningful right of appeal against assessment decisions.

The legislation should establish a National Pupillage and Training Framework, specifying the minimum requirements for supervised practice, the qualifications and obligations of supervisors, and the formal training requirements for new advocates. Compliance with the Framework should be monitored and enforced by the regulatory body.

The legislation should create a mandatory continuing professional development framework, requiring all practicing advocates to complete a minimum number of hours of CPD per year

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across defined categories of activity. The regulatory body would accredit CPD providers and monitor compliance.

The legislation should require the regulatory body to publish annual reports on the state of the legal profession, including enforcement statistics, enrollment and training data, and an assessment of progress on access to justice. These reports should be publicly available and should be laid before Parliament.

Section 25.2: The Transition Plan - Sequencing and Phasing Reform

The reforms described in this Part and in Part One represent a comprehensive and ambitious agenda that cannot be implemented all at once. A realistic reform strategy requires prioritization, sequencing, and careful management of the transition from the current system to the reformed system.

The first priority should be the governance reforms that create the institutional foundation for all subsequent reforms. Without a reformed governance structure, the Bar Council (or its successor) will not have the political independence, the regulatory capacity, or the public legitimacy necessary to drive the other reforms. The governance reforms should include the separation of regulatory and representative functions, the transformation of the Board composition, the introduction of conflict-of-interest rules and transparency requirements, and the reform of the financial governance. These governance reforms should be achieved through primary legislation, passed as early as possible in the new Parliament's term.

The second priority should be the reform of the enrollment examination framework. This is the reform that most directly affects the large number of candidates who sit for the examination each year, and it is a reform that can and should be designed and implemented relatively quickly. The introduction of an independent assessment body, the redesign of the written examination, and the reform of the viva voce process should all be achievable within two to three years of the legislative mandate.

The third priority should be the development of the National Pupillage and Training Framework and the associated reforms of the practical training system. This is a more complex undertaking that requires the development of institutional infrastructure (accreditation of training providers, development of supervisor training, design of formal training events) and cultural change within the profession (securing the commitment of senior advocates to their training obligations). A realistic timeline for the full implementation of the NPTF is three to five years.

The fourth priority should be the introduction of the mandatory continuing professional development framework, the specialist accreditation system, and the pro bono requirement. These are all reforms that build on the improved basic regulatory infrastructure and that require the regulatory body to be functioning effectively before they can be properly administered. A timeline of five to seven years for full implementation of these elements is realistic.

The fifth priority, and the longest-term element, is the cultural and educational change that underpins all the institutional reforms. This includes the transformation of legal education

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pedagogy and curriculum (discussed in Part Four of this textbook), the development of a culture of professional ethics and public service, and the development of the academic legal culture that will produce the scholarship and the critical analysis that ongoing legal system improvement requires. These changes operate on a generational timescale; the transformation of a professional culture takes twenty to thirty years, not two to three. But the work must begin now if it is to be substantially complete within a generation.

CONCLUDING SYNTHESIS OF PART TWO: THE REFORMED BAR COUNCIL AS AN INSTITUTION OF DEMOCRACY

The argument of Part Two has been that the reform of the Bangladesh Bar Council is not a technical administrative matter but a fundamental question of democratic governance. Professional self-regulation of the legal profession is, at its best, an expression of democratic civil society: the profession governing itself according to values and standards that it has collectively developed and that it collectively enforces, in the service of clients and the public rather than the service of established professional interests. At its worst, professional self-regulation is a form of organized self-interest that uses the rhetoric of quality and ethics to protect established practitioners from competition, to insulate professional conduct from external accountability, and to capture regulatory processes for political and personal ends.

The Bangladesh Bar Council has, throughout much of its history, operated closer to the worst end of this spectrum than the best. The arguments made in this Part, drawing on comparative institutional analysis, jurisprudential theory, and empirical documentation of the Bar Council's current performance, demonstrate that this is not merely a matter of individual failures of integrity or competence. It is a structural problem, rooted in the institutional design of the Bar Council and in the broader political and cultural environment in which it operates. Structural problems require structural solutions, and the reform proposals advanced in this Part are structural solutions.

The timing could hardly be better or more important. Bangladesh stands at one of the most significant junctures in its history. The July Uprising of 2024 and the reform process of 2024-2026 have created a genuine opportunity for democratic renewal. The constitutional reforms approved in the February 2026 referendum, the judicial reform recommendations of the Judiciary Reform Commission, and the broader institutional reform agenda of the Yunus interim government represent a political window for fundamental institutional change that will not remain open indefinitely. The legal profession, the legal academy, and the advocates of reform within and outside the Bar Council must seize this opportunity with urgency and vision.

The reformed Bar Council that Part Two envisions is an institution that is genuinely independent of both the government and the organized political factions of the bar, that is governed by leaders selected for their regulatory competence and professional integrity rather than their political loyalty, that enforces professional standards with rigor and consistency, that takes its educational function seriously and operates a genuine system of professional formation, that advocates effectively for the rule of law, judicial independence, and access to justice, and that represents

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the profession's best collective judgment about what it means to be a lawyer in a democratic society. This is an ambitious vision, but it is achievable. The institutional designs, the legislative frameworks, and the policy mechanisms to realize it have been described in this Part. What remains is the political will and the sustained professional commitment to implement them.

The legal profession of Bangladesh has, at its best, a proud tradition of commitment to justice, to the rule of law, and to the rights of citizens against the power of the state. The leaders of the language movement of 1952, the resistance to military dictatorship, the advocacy for constitutional democracy that produced the black coat movements: these are the traditions that a reformed and renewed Bangladesh Bar Council should inherit and continue. The road from the current institution to that ideal is long and difficult, but it runs in a clear direction, and the beginning of that journey is now.

BIBLIOGRAPHICAL NOTES AND REFERENCES FOR PART TWO

Recent primary sources of central importance for Part Two include the following. The Bangladesh Judiciary Reform Commission's report, submitted to Chief Adviser Muhammad Yunus on February 5 and 15, 2025, led by former Justice Shah Abu Nayeem Mominur Rahman, is a foundational document for understanding the contemporary reform agenda for the Bangladeshi justice system. Its recommendations on judicial appointments, judicial independence, and decentralization of the courts are extensively discussed in Chapter Twenty-One. The 380-page report has been partially summarized in The Daily Star's February 2025 coverage and in government press releases, though the full text deserves careful reading by any serious student of Bangladeshi legal reform.

The July National Charter, signed by twenty-five political parties on October 17, 2025, containing eighty-four reform recommendations, is available through the National Consensus Commission's public documents. The Charter's constitutional implications are analyzed extensively in Chapter Twenty-One. The Constitutional Reform Commission's report, led by Ali Riaz, submitted in January 2025, provides the detailed constitutional analysis underlying the Charter's constitutional reform proposals.

The Bangladesh Bar Council election announcement of April 4, 2026, designating May 19, 2026, as the election date, and presided over by Attorney General Barrister Md. Ruhul Quddus Kazal, is reported in Bangladesh Sangbad Sangstha (BSS) and is directly relevant to the governance reform analysis in Chapters Fifteen and Twenty-Five. The significance of this election in the post-reform political context is discussed in Section 21.3.

The Daily Star's November 30, 2024, analysis "Bangladesh Bar Council: A Call for Urgent Reform" provides essential contemporary documentation of the reform agenda and is cited throughout Part Two. Its specific proposals regarding examination transparency, financial support for young advocates, and CPD requirements are discussed in Chapters Sixteen, Twenty-Two, and Twenty-Three respectively.

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The Supreme Court Judges Appointment Ordinance of January 21, 2025, which established for the first time in Bangladesh's history a structured commission-based process for Supreme Court judicial appointments, is discussed in Section 21.1. The Legal Aid Ordinance revision of July 1, 2025, which expanded the framework for legal assistance, is discussed in Section 22.1.

From the comparative professional regulation literature, the key sources include Richard Susskind, Tomorrow's Lawyers (2nd ed., Oxford University Press, 2017), which provides the most comprehensive current analysis of how technology is transforming legal services and professional regulation; Harry W. Arthurs, Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada by the Consultative Group on Research and Education in Law (1983), which remains one of the finest analyses of legal education's relationship to scholarship and practice; and the American Bar Association's MacCrate Report (Legal Education and Professional Development, 1992), which was a precursor to the Carnegie Report in identifying the skills deficits of legal education.

On access to justice, the foundational texts include Mauro Cappelletti and Bryant Garth's monumental Access to Justice project, particularly Volume One: A World Survey (Sijthoff and Noordhoff, 1978), which remains the most comprehensive comparative survey of access to justice systems ever undertaken, and the more recent World Justice Project's Rule of Law Index, which provides annual data on access to justice across more than 100 countries and consistently shows Bangladesh performing below its regional peers on most access to justice indicators.

On legal ethics and professional responsibility, the key sources for Part Two include David Luban, Lawyers and Justice: An Ethical Study (Princeton University Press, 1988); William H. Simon, The Practice of Justice: A Theory of Lawyers' Ethics (Harvard University Press, 1998); and for the South Asian context, Rajeev Dhavan and Alice Jacob (eds.), Selection and Appointment of Supreme Court Judges: A Case Study (N.M. Tripathi, 1978), which, while focused on India, provides the most detailed available analysis of the relationship between judicial appointment processes and judicial independence in the South Asian context.

END OF PART TWO

Part Three will undertake an exhaustive examination of the current legal education system in Bangladesh in its full complexity, covering the history of legal education from the colonial era to the present, the sociology of legal education, the pedagogy of legal teaching, the curriculum design debates, the practical training gap, and the development of a comprehensive proposal for a reformed system of legal education that serves both the professional needs of the bar and the broader democratic and access-to-justice functions of the legal system.

Part Four will develop the case for the national LLB admission test in much greater detail, including the design specifications for the test, the equity provisions that should accompany its introduction, the governance of the admitting body, and the transition from the current system to the reformed admissions framework.

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Parts Five through Twelve will address, respectively: the reform of legal education curricula and pedagogy; clinical legal education and access to justice; the specialization framework; the professional doctoral program; personal law and its reform; the International Crimes Tribunal and transitional justice; the court system and case backlog; and the future of Bangladeshi law in the global legal order.

PART THREE: THE LEGAL EDUCATION SYSTEM OF BANGLADESH: HISTORY, CRISIS, SOCIOLOGY, PEDAGOGY, AND THE ARCHITECTURE OF REFORM

Commentary on the Legal System of Bangladesh, Bar Council, and Necessary Reforms

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PREFACE TO PART THREE

The argument made at the close of Part Two was that the reform of the Bangladesh Bar Council is inseparable from the reform of the institution that feeds it: the legal education system of Bangladesh. It is impossible to create a competent, ethical, and independent legal profession without first creating a competent, rigorous, and intellectually serious system of legal education. The two are bound together in a relationship of mutual dependence that makes it analytically unsatisfying, and practically unproductive, to treat them as separate problems. A reformed Bar Council that inherits graduates from unreformed law schools will find that its enrollment examinations sort among inadequately prepared candidates, that its disciplinary processes deal repeatedly with the same patterns of professional failure rooted in educational deficit, and that its aspirations for a learned profession remain perpetually frustrated by the intellectual poverty of the education that produces its members. Conversely, a reformed legal education system that produces capable, analytically sophisticated, ethically serious graduates will be systematically wasted if those graduates are enrolled in a profession still governed by the dysfunctions described in Part Two.

Part Three addresses the educational side of this nexus. It is a long part, necessarily so, because the legal education system of Bangladesh is both deeply historically rooted and comprehensively in crisis, and understanding either dimension requires sustained analysis. The history reaches back to the late eighteenth century, to the first experiments of British colonial administrators in creating an Indian legal profession capable of staffing the courts they were building. That history is not merely antiquarian: it explains why the system has the shape it does, why certain dysfunctions are so persistent, and why certain reforms have so consistently failed to take root despite repeated official endorsement. The crisis is multi-dimensional: it involves the quality of teaching, the content of curricula, the nature of assessment, the culture of academic life in law faculties, the structural problem of an enormous and largely ungoverned private sector, and the systemic disconnect between what law schools teach and what legal practice requires. The reforms required are correspondingly comprehensive.

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This Part draws on jurisprudential theory, comparative legal education scholarship, sociology of higher education, and the specific empirical record of Bangladesh's legal education institutions. It argues that the current system is not merely performing poorly by the standards it has set for itself, but that it has set the wrong standards altogether. The dominant model of legal education in Bangladesh conceptualizes law primarily as a body of rules to be memorized, legal education primarily as a process of rule transmission, and the purpose of law schools primarily as the production of candidates qualified to sit for the Bar Council enrollment examination. All three of these conceptualizations are wrong, and their wrongness is deeply rooted in both historical inheritance and contemporary institutional incentives. The reform proposed in this Part begins with a fundamental reconceptualization of what legal education is for, and then works outward from that reconceptualization to institutional design, curriculum content, pedagogy, faculty development, assessment, and governance.

The reader who has followed Parts One and Two will find Part Three a natural continuation of the argument. The philosophical analysis of law's nature in Part One, the jurisprudential traditions of Bengal in Part One, and the institutional analysis of the Bar Council in Part Two all bear directly on the questions of legal education that Part Three addresses. Part Three also prepares the ground for Part Four, which will develop the detailed case for a national LLB admission test, and for Part Five, which will examine curriculum reform in greater technical detail.

CHAPTER SIXTEEN: THE HISTORICAL FOUNDATIONS OF LEGAL EDUCATION IN BANGLADESH

Section 16.1: The Colonial Origins: From Vakils to Law Graduates

The history of formal legal education on the territory that is now Bangladesh begins, like so much else in the country's legal history, with the colonial encounter. Before the British, there were of course learned men in law: Islamic scholars trained in the fiqh tradition who served as qazis in Mughal courts, Hindu pandits versed in the Dharmashastra who advised courts on matters of Hindu law, and a class of indigenous legal practitioners called vakils who navigated the Mughal court system on behalf of litigants. But none of these constituted a formal legal education system in the modern sense. They represented instead the transmission of specialized knowledge through apprenticeship, through study at madrasas and tols, and through the kind of informal guild-like training that characterized most specialized knowledge transmission in pre-modern societies.

The transformation began with the Regulating Act of 1773 and the establishment of the Supreme Court of Judicature at Fort William in Calcutta. As discussed in Part One, this court applied English law to those within its jurisdiction, and it required legal representatives who understood English legal procedure. The earliest indigenous legal practitioners before the Supreme Court were largely self-taught, learning from observation, from whatever legal texts they could obtain, and from the informal mentorship of European attorneys and barristers. Their quality was highly variable and their status uncertain.

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The first significant effort to formalize legal education came with the establishment of the Bengal Law School in Calcutta in the mid-nineteenth century. This institution, which underwent various transformations over the decades, was designed to provide formal instruction in law to those who sought to qualify as pleaders before the mofussil courts, the lower civil and criminal courts that the Company and later the Crown administered across Bengal. The curriculum of these early law schools was limited by contemporary standards: it covered the major codes of Indian law, some elements of English law, and the procedural requirements of the courts. But it was a beginning, and it represented a recognition that the legal system required a formally trained cadre of indigenous practitioners.

The University of Calcutta, established by the Universities Act of 1857, became the central examining body for legal education in Bengal. A Bachelor of Laws degree from Calcutta University became increasingly important as a qualification for practice, and the various law schools that existed in the region began to prepare their students for Calcutta University examinations. This pattern, of formal degree education through university-affiliated institutions as the pathway to professional qualification, became the basic architecture of legal education in Bengal and has remained the basic architecture in Bangladesh ever since, though the institutions have changed, the degrees have evolved, and the examination bodies have been replaced.

The Calcutta High Court, established in 1862, required a higher standard of qualification from advocates who appeared before it. Barristers called to the English or Irish bars, or solicitors admitted in England, could appear before the High Court, as could Indian advocates who had passed the necessary examinations. This created a hierarchical structure in the legal profession that mapped onto the hierarchical structure of legal education: those at the top of the profession had English qualifications obtained through the Inns of Court, while those at lower levels had Indian qualifications obtained through the universities. This hierarchy, between English-trained barristers and locally trained advocates, between those with metropolitan credentials and those with provincial ones, had lasting cultural effects on how legal education was valued and how its purpose was understood.

The period between the two World Wars saw significant developments in legal education in Bengal. The Dhaka University, established in 1921, included from its inception a Faculty of Law that offered LLB degrees. Dhaka Law Faculty quickly established itself as the most prestigious institution for legal education in the eastern part of Bengal, and its graduates went on to populate the legal profession, the judiciary, and the civil service of the eastern provinces. The culture of this Faculty, shaped by its British founders and by the indigenous scholars who joined it, was deeply influenced by the Oxbridge model of legal education: a strong emphasis on doctrinal knowledge, on the careful reading of cases and statutes, on the cultivation of formal advocacy skills, and on law as a learned discipline with a significant humanistic dimension. Whatever its limitations by the standards of contemporary legal education theory, this model produced a generation of lawyers who were, within the scope of what they had been taught, genuinely learned in the law.

The partition of Bengal in 1947 and the creation of East Pakistan introduced a new dynamic. The migration of many Hindu lawyers and law teachers from East to West Bengal after partition left a significant gap in the eastern legal profession. New entrants were needed, and the pressure to

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expand legal education was intense. This pressure, combined with a general tendency toward the expansion of university education that characterized the early decades of Pakistani rule, set in motion a process of quantitative expansion of legal education that has continued ever since and that has consistently outrun the capacity for quality control. The Dhaka University Law Faculty remained the prestige institution, but new law colleges affiliated to Dhaka University began to proliferate across East Pakistan, each offering its own version of legal education, and the variation in quality between them was substantial even at this early stage.

Section 16.2: The Post-Independence Expansion and the Seeds of Crisis

When Bangladesh achieved independence in 1971, the legal education system it inherited was already under strain. The liberation war had disrupted the universities and law schools. Many experienced academics had been killed or had left. Physical infrastructure had been damaged. The psychological trauma of the war years had created a climate of urgency in which rebuilding basic functioning took precedence over reforming the educational system's quality. The Bangladesh government in the early years of independence was understandably focused on the enormous challenges of nation-building: establishing a functioning government, managing the refugee crisis, creating an economy, and framing a constitution. Legal education reform was not a priority.

The National University of Bangladesh, established in 1992, represented the most significant structural change to the higher education landscape of Bangladesh since independence, and its impact on legal education has been profound and largely negative. The National University was created to govern the large number of degree colleges across Bangladesh that were affiliated to various universities but that existed in a kind of regulatory limbo. By bringing these colleges under a single umbrella institution with its own examination system, the government intended to improve quality control and reduce the chaos of multiple affiliation arrangements. In practice, the National University became an administrative entity of enormous size and very limited capacity, governing hundreds of institutions with minimal resources and weak accountability mechanisms.

The law colleges affiliated to the National University became, and have remained, the numerically dominant part of the Bangladeshi legal education system. There are currently over eighty law colleges operating under the National University's umbrella, spread across the country, offering two-year and four-year programs that lead to LLB degrees recognized by the Bangladesh Bar Council for the purpose of enrollment. The quality of education in many of these institutions is, to put it charitably, highly variable. Some maintain reasonable academic standards. Others have little full-time faculty, inadequate libraries, limited teaching resources, and examination systems that reward rote memorization rather than legal reasoning. A significant proportion of their students enter the legal profession with deficits of knowledge and skill that the enrollment examination does not adequately identify, let alone remedy.

The private university sector's entry into legal education came with the Private University Act of 1992 and the subsequent proliferation of private universities that this Act enabled. As the search results consulted for this Part indicate, there are now more than thirty private universities offering law degrees in Bangladesh, in addition to the law faculties of the public universities and

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the National University law colleges. The quality spectrum in the private university sector is extremely wide: at one end, institutions like BRAC University, North South University, and a handful of others maintain genuine academic standards, employ faculty with advanced degrees from reputable institutions, run clinical legal education programs, and produce graduates who are genuinely educated in the law; at the other end, institutions that were established primarily to generate revenue rather than to provide education award degrees that represent very little genuine learning. The regulatory framework for private university legal education has been inadequate since the beginning of the private university era, and the two Supreme Court decisions of 2016 and 2017 discussed in Section 16.3 below represent the most significant judicial engagement with this problem to date.

The explosion in the number of law graduates has not been accompanied by any corresponding expansion in the quality of legal education, in the capacity of the courts to absorb new advocates, or in the economy's demand for legally trained professionals. The result is a situation that must be described as a crisis without exaggeration. Each year, thousands of graduates of widely varying educational quality present themselves for the Bar Council enrollment examination. Many of them fail. Many of those who pass do so with marks that reflect minimum competence at best. They enter a profession that is already overcrowded, where the income opportunities for newly enrolled advocates are severely limited, where the mentorship and supervision that a developing professional needs are largely absent, and where the formal system of legal education has not equipped them with the practical skills they need to serve their clients effectively.

This crisis is not the product of bad intentions on anyone's part. It is the predictable consequence of a set of structural incentives and institutional arrangements that consistently produce the same outcomes regardless of the good intentions of individual teachers, administrators, regulators, and students. Understanding these structural drivers requires engaging with the sociology of legal education, a task to which Section 16.3 turns.

Section 16.3: The Supreme Court's Judicial Intervention in Legal Education

The two Supreme Court decisions mentioned in the preface to this chapter deserve careful examination, because they represent the first and so far the most authoritative judicial engagement with the quality of legal education in Bangladesh, and they illuminate both the dimensions of the problem and the limitations of judicial intervention as a reform mechanism.

The first decision, Professor Syed Ali Naki and others v Bangladesh and others, decided by the High Court Division on April 13, 2016, arose from a challenge to the legality of the private university law programs that had proliferated across Bangladesh. The petitioners argued that many of these programs were operating in violation of the Private University Act and of the standards prescribed by the University Grants Commission, and that the resulting graduates were being enrolled as advocates despite receiving an education that did not meet minimum professional standards. The High Court Division found in favor of the petitioners and issued a series of directions designed to improve the regulation of private university law programs. These included directions to limit the number of students admitted to law programs, to require adequate full-time faculty, to mandate minimum library and other resources, and to shut down the two-

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year LLB (Pass) course that had become a pathway to enrollment for graduates of other disciplines.

The second decision, Bangladesh Bar Council and others v A.K.M. Fazlul Kamir and others, decided by the Appellate Division on February 8, 2017, confirmed and elaborated on the High Court Division's directions. The Appellate Division upheld the order to shut down the two-year LLB (Pass) course and issued additional directions relating to the standards required of private university law programs. The significance of these decisions for the present analysis lies not only in their specific holdings but in the broader judicial recognition they embody of a fact that reformers had been arguing for years: that the legal education system of Bangladesh was producing graduates who were not adequately prepared for professional practice, and that this inadequacy was a public interest problem requiring regulatory intervention.

The judicial engagement with legal education quality was, however, necessarily limited by the constraints of the adjudicative process. Courts can issue directions; they cannot redesign curricula, retrain faculty, build libraries, or create a culture of intellectual seriousness in institutions that lack one. The directions issued by the Supreme Court were significant as statements of principle and as catalysts for regulatory attention, but their implementation has been uneven. The two-year LLB (Pass) course was not immediately abolished in the manner the court directed; the Bar Council continued to receive enrollment applications from graduates of programs that arguably did not meet the court's standards; and the University Grants Commission's capacity to monitor and enforce compliance with the court's directions was limited by its own institutional constraints.

This pattern, of judicial recognition of a problem followed by incomplete implementation of remedial directions, is familiar from comparative legal education reform literature. In the United States, the American Bar Association's accreditation standards for law schools, which perform a regulatory function analogous to what the Supreme Court was attempting to exercise in Bangladesh, have been subject to similar criticisms: that they set minimum standards rather than aspirational ones, that they focus on inputs (faculty numbers, library resources) rather than outcomes (whether graduates can practice competently), and that the accreditation process is compromised by the profession's interest in protecting the value of existing credentials against competition from new entrants. The Bangladesh Supreme Court's intervention is best understood as a recognition of the problem of legal education quality, not as a solution to it.

The solution requires institutional redesign, which is a legislative and administrative task rather than a judicial one. The specific institutional designs needed are the central concern of this Part.

CHAPTER SEVENTEEN: THE SOCIOLOGY OF LEGAL EDUCATION IN BANGLADESH

Section 17.1: Who Studies Law and Why

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Any serious analysis of legal education must begin with an honest sociology of who studies law, under what circumstances, and with what expectations. The demographics of law students and the social functions that legal education serves in Bangladesh have changed dramatically over the past three decades, and these changes explain much about the current state of the system.

The traditional social profile of the Bangladeshi law student, dominant through the 1970s and into the 1980s, was of someone who chose law as a vocation, who came from a family with some connection to the legal profession or the educated middle class, who attended one of the limited number of serious law programs available, and who expected to enter practice or the judiciary as a lifelong career. Law was a selective, moderately prestigious professional education that attracted students who had both the academic ability to qualify for it and a genuine interest in legal practice.

This profile has been dramatically diversified, and in some respects degraded, by the changes of the past three decades. The explosion of law programs, particularly in the National University college sector and the lower tier of the private university sector, has made legal education available to a much wider demographic than previously had access to it. This democratization of access is, in principle, a positive development: a legal profession should not be the exclusive preserve of a social elite. But the expansion of access has not been accompanied by the support structures, the quality assurance mechanisms, or the labor market capacity to absorb the resulting graduates. The consequence is a system in which large numbers of students pursue legal education not because they have a genuine vocation for or interest in the law, but because it is one of the few advanced degrees that remains relatively accessible to those who have not performed well enough in their HSC examinations to gain admission to more selective programs.

This phenomenon, sometimes described in comparative higher education literature as the "cooling out" function of non-selective programs, has profound implications for the culture of legal education in Bangladesh. When a significant proportion of law students are there not out of genuine interest in law but because they lacked other options, the pedagogical challenge is transformed. Students who are motivated, genuinely curious about the law, and committed to developing real competence are energizing to teach and relatively easy to educate. Students who are present primarily because they see a law degree as a fallback credential, who are focused on obtaining the degree with minimum effort, and who have limited intrinsic interest in the intellectual content of their courses, present very different pedagogical challenges.

The distinction between students who choose law and students who fall into it is not merely an observation about individual motivation; it reflects deeper structural features of the Bangladeshi education and labor market that legal education reform cannot by itself resolve. The inadequacy of career guidance at the secondary and post-secondary level means that many students choose their degree programs without adequate information about what legal education actually involves, what a legal career actually looks like, or what the realistic employment prospects for law graduates in Bangladesh are. The crisis in the broader higher education system documented in the 2025 analysis cited above, in which over 2.6 million people were unemployed in 2024 and nearly 900,000 of them held university degrees, affects legal education as powerfully as any other field of study.

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Within the law student population, there are important stratifications that map onto the institutional hierarchy. Students at the University of Dhaka's Faculty of Law, Jahangirnagar University, BRAC University, North South University, and a handful of other institutions that maintain rigorous selection criteria and high academic standards constitute the upper tier: they are better academically prepared, more likely to have genuine interest in legal careers, better supported by faculty and institutional resources, and more likely to go on to successful legal careers. Students at the large number of National University-affiliated law colleges and the lower tier of private universities constitute a much larger but far more heterogeneous population, ranging from capable students who have chosen their institution for reasons of geography or cost to genuinely underprepared students who are unlikely to achieve professional competence regardless of the quality of teaching they receive.

The gender composition of law student cohorts has shifted significantly over the past two decades. Women now constitute a substantial proportion, in some institutions a majority, of law students at the undergraduate level. This shift reflects broader changes in women's participation in higher education in Bangladesh, which has expanded dramatically since the 1990s. However, the representation of women in the professional bar remains much lower than their representation in law school cohorts, reflecting the structural barriers that women face in entering and remaining in legal practice: the culture of the profession, which retains strong patriarchal elements; the physical environment of courts, which can be hostile or at minimum unwelcoming to women; the economic barriers to entry for newly enrolled advocates of any gender; and the particular difficulties for women of combining the demands of a legal career with family responsibilities in a context where the social distribution of domestic labor remains highly unequal.

The implications of this gender gap for legal education reform are significant. A reformed legal education system that takes seriously its responsibility to prepare all its students for professional success must address not only the content of what is taught but the culture in which it is taught and the support structures available to students who face particular challenges in making the transition from education to practice. Gender-specific mentorship programs, attention to the culture of law faculties and how it interacts with gender dynamics, and active engagement with the profession about its treatment of women are all parts of a comprehensive reform agenda.

The class dimension of legal education sociology is equally important and equally neglected in most policy discussions. Legal education in Bangladesh is more socially diverse than it once was, but it remains a field in which the advantages of class position compound themselves in ways that the formal structures of legal education do not counter. Students from more affluent families have better secondary education, better English language skills, more exposure to professional networks, and more resources to sustain themselves during the period of building a practice after enrollment. Students from less affluent families have none of these advantages and face the additional challenge of needing to generate income relatively quickly after qualification, which pressures them toward whatever work is immediately available rather than the longer-term investment in developing specialized expertise that a more financially secure entry into practice would allow.

Section 17.2: The Political Economy of Legal Education

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The sociology of legal education cannot be separated from its political economy: the economic interests that shape how the system is organized and how its products are deployed. Legal education in Bangladesh has become, over the past three decades, a significant industry in both the public and private sectors, and understanding the economic interests at stake helps explain why reform is so difficult.

In the private university sector, legal education is a revenue-generating operation. Law departments can be established with relatively low capital investment compared to science or engineering faculties: they require libraries, classrooms, and faculty, but not laboratories, specialized equipment, or clinical facilities. The revenue from student fees is substantial, and in many private institutions the law department is among the more profitable academic units. This creates a structural incentive to maximize enrollment, which runs directly counter to the quality considerations that would dictate limiting enrollment to those who can benefit from rigorous legal education. The Private University Act and the University Grants Commission's accreditation requirements constrain this incentive at the margins, but they do not eliminate it, and the recent higher education crisis described in the November 2025 analysis, in which many institutions struggle to attract students at all, has intensified the competitive pressure on private universities to fill their seats regardless of students' preparation.

In the National University college sector, the political economy is different but equally problematic. Law colleges are often locally prominent institutions that serve as both educational providers and significant local employers. They have political relationships with local politicians, who may have interests in maintaining them regardless of their academic quality. The National University itself, as a large bureaucratic institution governing hundreds of affiliated colleges, has very limited capacity for meaningful quality oversight and strong institutional incentives to maintain its existing affiliations rather than to challenge the quality of affiliated institutions in ways that might create political complications.

The faculty of law departments, at both the university and college levels, have their own economic interests that do not always align with the public interest in quality legal education. In many institutions, particularly at the National University college level, academic positions are poorly remunerated and faculty rely on private practice income, private tutoring, or other sources to supplement their academic salaries. This creates the conditions for the neglect of academic duties that is widely reported: faculty who are primarily engaged in practice or other income-generating activities cannot devote the time and energy to teaching, curriculum development, and student supervision that quality legal education requires. The problem is not that these faculty are bad people; it is that the system creates incentives for behavior that is personally rational but collectively damaging.

The Bar Council's own political economy enters here as well. The enrollment examination, as discussed in Part Two, is a significant source of revenue for the Bar Council. The large number of candidates who sit for the examination each year, the examination fees they pay, and the commercial ecosystem that has developed around examination preparation, all represent economic interests that benefit from maintaining a high-volume, relatively undiscriminating flow of candidates into the examination system. A more selective approach to legal education, one that produced fewer but better-prepared graduates, would reduce the volume of examination

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candidates and thus the revenue and economic significance of the examination apparatus. This is not an argument that anyone in the Bar Council consciously makes, but it is a structural pressure that operates regardless of anyone's conscious intentions.

Understanding this political economy is essential for anyone designing a reform strategy. Reforms that threaten the economic interests of established actors, without offering adequate compensation or transition support, will face resistance that is likely to be more powerful than any abstract commitment to quality improvement. Effective reform design must therefore anticipate and address these interests, not in the sense of accommodating them at the expense of quality, but in the sense of designing transitions that minimize the costs to existing actors while achieving the quality improvements that the public interest requires.

Section 17.3: The Social Functions of Legal Education

Beyond its role in producing practicing lawyers and judges, legal education serves a number of other social functions that are relevant to the design of a reformed system. These broader functions have been recognized in comparative legal education scholarship, most notably in the work of scholars like Harry Arthurs, whose landmark 1983 Consultative Group report for the Social Sciences and Humanities Research Council of Canada identified the multiple purposes that law schools serve in democratic societies: professional education, but also the production of legal scholarship, the critical analysis of law and legal institutions, the education of a legally literate citizenry, and the development of the normative frameworks within which democratic governance operates.

In Bangladesh, these broader social functions of legal education are almost entirely unrecognized in the formal discourse about law schools. The dominant discourse conceives of law schools almost exclusively in terms of their professional education function: they exist to produce advocates who can pass the enrollment examination and practice before the courts. This narrow conception is impoverishing in multiple ways.

It prevents law schools from developing their capacity for legal scholarship. The production of original, analytically serious scholarship about law, legal institutions, and the relationship between law and society is a central function of law faculties in any serious legal system. This scholarship serves multiple purposes: it provides the intellectual resources that judges need to develop the law, that legislators need to design better laws, and that practitioners need to understand the legal system they navigate. It provides Bangladesh with the intellectual capacity to engage critically with international legal developments rather than simply receiving them. And it develops a culture of intellectual seriousness in law faculties that has beneficial effects on the quality of teaching. A law faculty in which serious scholarly work is expected and valued is a very different environment from one in which teaching is purely instrumental. In Bangladesh, legal scholarship is very limited. The number of peer-reviewed academic law journals produced in Bangladesh is tiny. The number of law faculty members with research doctorates from reputable institutions is small. The institutional support for legal research, in terms of research time, library resources, research funding, and recognition in promotion and tenure decisions, is minimal in most institutions.

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The broader social function of educating a legally literate citizenry is also neglected. In a democracy, the ability of citizens to understand their legal rights and to use legal institutions to enforce them is a fundamental democratic capacity. Legal education, even for those who do not go on to become lawyers, can contribute to developing this capacity if it is designed to engage students with the relationship between law and society, with the constitutional framework of rights and responsibilities, and with the practical mechanics of how legal institutions work. The current curriculum design in most Bangladeshi law programs is poorly suited to developing this broader civic literacy, focused as it is on the technical details of doctrinal law rather than on the political, social, and ethical dimensions of law in a democratic society.

The function of critical analysis of law and legal institutions is perhaps the most demanding but also the most important of the broader social functions that legal education should serve. Bangladesh needs law graduates who can look at existing laws and legal institutions with a critical eye, who can identify where they are failing to serve justice, who can articulate reform proposals grounded in serious legal analysis, and who can participate intelligently in the public debate about legal reform. The production of this critical capacity requires a legal education that goes well beyond the transmission of existing doctrine and that engages students with jurisprudence, legal history, comparative law, law and society, and the empirical analysis of how legal institutions actually operate. Most Bangladeshi law programs provide none of this.

CHAPTER EIGHTEEN: THE PEDAGOGY OF LEGAL EDUCATION: THEORY AND BANGLADESHI PRACTICE

Section 18.1: The Major Traditions of Legal Pedagogy

Legal pedagogy, the science and art of teaching law, has been the subject of sophisticated academic analysis for over a century. Understanding the major traditions of legal pedagogy is essential for analyzing the pedagogical failures of the Bangladeshi system and for designing the reforms needed to address them.

The oldest and still most widespread tradition of legal pedagogy in the common law world is the lecture method, which derives from the model of medieval European universities and involves the teacher reading or expounding from an authoritative text while students take notes. In its more sophisticated contemporary form, the lecture method involves the teacher synthesizing and explaining a body of doctrine, drawing connections between different rules, identifying the principles underlying specific decisions, and demonstrating the kind of analytical thinking that legal reasoning requires. At its best, the lecture can be an intellectually powerful instrument: a truly gifted legal teacher can use a lecture to demonstrate modes of legal analysis, to explore the tensions within a body of doctrine, and to illuminate the relationship between specific rules and broader principles in ways that are both informative and intellectually exciting. At its worst, the lecture becomes a dictation exercise, with students passively recording what the teacher says and reproducing it in examinations without any real understanding of why the rules are what they are or how they relate to each other.

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The Socratic method, developed as a dominant pedagogy at American law schools in the late nineteenth century, most famously under Christopher Columbus Langdell at Harvard Law School, represents a very different approach to legal teaching. In the Socratic method, the teacher uses questioning rather than exposition to develop the students' understanding: the teacher assigns cases to be read in advance, and in class proceeds to interrogate individual students about the content, reasoning, and implications of the assigned cases, pressing them to defend their interpretations, to distinguish their cases from others, and to articulate the principles that might reconcile apparently conflicting decisions. The Socratic method was designed explicitly to train students in the kind of analytical thinking that legal practice requires: the ability to read cases carefully, to extract their relevant features, to construct and defend arguments from them, and to anticipate and respond to opposing arguments.

The case method, which is what the Socratic method in Langdell's formulation actually involved, has been enormously influential in American legal education and has had some influence in other common law systems. Its critics, however, have been numerous and have raised important points. Duncan Kennedy, in his famous 1982 essay "Legal Education and the Reproduction of Hierarchy," argued that the Socratic method as practiced in American law schools was not a neutral pedagogical tool but a mechanism for socializing students into a particular professional identity and a particular relationship to legal authority, one that systematically masked the political and ideological dimensions of legal doctrine behind an apparently objective analytical technique. Other critics have argued that the Socratic method is pedagogically inefficient, that it tends to benefit students who are already analytically sophisticated and confident while disadvantaging those who most need careful teaching, and that its adversarial quality creates a classroom culture that is unnecessarily stressful and exclusionary.

The skills-based or experiential approach to legal education, associated with the clinical legal education movement that began in the United States in the 1960s and has since spread globally, represents a third major tradition. Clinical legal education involves students working under supervision on real legal matters, either within law school clinics that provide services to the public or through structured placements in courts, law firms, NGOs, and other legal environments. The theoretical foundation of clinical legal education is that legal competence cannot be developed through classroom instruction alone, that the skills required for legal practice, including client interviewing, fact investigation, legal research, drafting, negotiation, and advocacy, must be developed through supervised practice rather than through academic study of doctrine. This claim is well supported by the learning theory literature, which consistently shows that complex professional skills are most effectively developed through a combination of conceptual instruction and supervised practice with feedback.

A fourth major tradition, less formalized than the others but equally important, is the interdisciplinary or sociolegal approach to legal education, associated with the Law and Society movement that developed in the United States and Britain from the 1960s onward. This approach holds that law cannot be understood adequately without understanding the social context in which it operates, the social forces that shape it, and the social effects it produces. Legal education on this model incorporates perspectives from sociology, economics, psychology, political science, history, and other disciplines, treating law not as a self-contained system of rules but as one element of a complex social order that interacts with all other elements of that

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order. The interdisciplinary approach has been particularly influential in the development of fields like law and economics, feminist legal theory, critical race theory, and law and development, all of which have brought new intellectual resources to bear on legal questions.

In Bangladesh, the dominant pedagogical tradition is a poorly executed version of the lecture method combined with an examination system that rewards rote memorization. The Socratic method is virtually unknown in practice, though it is occasionally invoked in theory. Clinical legal education exists in a small number of institutions but is absent from the vast majority of law programs. The interdisciplinary approach is not part of the formal curriculum in any systematic way in most institutions, though individual faculty members may bring relevant perspectives into their teaching informally.

Section 18.2: The Black-Letter Law Problem

The most fundamental pedagogical problem in Bangladeshi legal education is what comparative legal education scholars call the "black-letter law" problem: the tendency to teach law as a body of fixed, determinate rules whose content can be memorized and reproduced, rather than as a complex system of principles, policies, and arguments whose application to specific situations requires judgment, creativity, and sensitivity to context.

The Prothom Alo op-ed published in February 2025, cited in the search results for this Part, articulates this problem with particular clarity in the context of the Bar Council enrollment examination: a significant portion of the examination focuses on memorizing sections of the Penal Code, Civil Procedure Code, and Criminal Procedure Code, and this approach is "not only outdated but also irrelevant to the skills needed in modern legal practice." The op-ed's observation that "in 2025, no one will expect an advocate to recite sections of the law from memory" because "legal databases and mobile apps readily available" make this an easily performed task identifies the core absurdity of the memorization-based approach. But the problem goes deeper than the technology argument suggests: even before the advent of legal databases, the ability to recite statutory provisions was far less valuable than the ability to understand what they meant, how they related to other provisions, how they had been interpreted by courts, and how they applied to specific factual situations.

The black-letter law problem in Bangladesh has multiple causes. The historical legacy of the colonial codification project, which produced a body of statute law of unusual clarity and self-containedness, reinforced the tendency to treat law as a body of rules accessible through the text of the codes. The examination system, at both the university and Bar Council level, has consistently rewarded memorization because it is the easiest form of legal knowledge to assess through traditional written examinations: it is far simpler to verify that a student can correctly state the elements of the offense of theft under section 378 of the Penal Code than to assess whether the student can analyze a complex factual scenario and identify all the relevant legal issues, apply the relevant law, construct a coherent argument, and anticipate and respond to counterarguments.

The inadequacy of faculty development and the weak research culture in most Bangladeshi law programs reinforces the black-letter approach. A teacher who has not developed genuine

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analytical sophistication in the law they teach will inevitably fall back on transmission of doctrine rather than demonstration of analysis. Teaching students to analyze law requires the teacher to have analytical skills, to model those skills in the classroom, and to design assignments and assessments that require students to demonstrate them. These are demanding requirements that cannot be met by teachers whose own legal education consisted primarily of memorizing rules and whose subsequent careers have not involved sustained engagement with legal analysis.

The resource constraints of many law programs also contribute to the black-letter problem. Genuine engagement with legal analysis requires access to law reports, to academic legal scholarship, to comparative legal materials, and to the kind of well-stocked law library that makes independent legal research possible. Most National University law colleges do not have such libraries. Many private university law departments have inadequate library resources. Without access to the materials of legal analysis, teaching is inevitably reduced to the transmission of what the teacher carries in their head, which in the absence of a strong reading and research culture, tends to be the contents of the standard textbooks, which are themselves organized around doctrinal transmission rather than analytical engagement.

The examination system deserves particular attention because of its enormous influence on what happens in law classrooms. In most educational systems, what is assessed is what is taught, and how it is assessed shapes how it is taught. The Bangladeshi law examination system is dominated by questions that require students to state the law on a particular topic, to list the elements of a cause of action or defense, or to reproduce the holding of a landmark case. Questions that require students to apply law to unfamiliar facts, to reason through a legal problem whose answer is not obvious, to construct an argument on one side of a contested legal question, or to evaluate competing legal arguments and explain which is more persuasive, are rare in both university examinations and the Bar Council enrollment examination. As long as the examination system rewards rote learning, the incentive for students to invest in developing genuine analytical skills is weak, and the incentive for teachers to invest in developing pedagogical approaches that cultivate those skills is correspondingly limited.

Section 18.3: The Assessment Problem in Detail

The problem of legal assessment in Bangladesh is sufficiently important and insufficiently analyzed that it warrants a dedicated section. Assessment is not a peripheral feature of legal education; it is a central driver of what actually happens in law programs, because it shapes the incentives of both students and teachers and because it is the mechanism by which the education system signals what it values.

The dominant form of assessment in Bangladeshi law programs is the end-of-year written examination, typically consisting of questions that require extended written answers. In principle, written examinations can assess a wide range of legal competencies, including analysis, argument, problem-solving, and synthesis. In practice, the specific questions asked in Bangladeshi law examinations rarely require anything beyond the reproduction of memorized information. This reflects both the assessment design choices of individual examiners and the lack of systematic investment in the development of assessment expertise in most law faculties.

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The development of assessment expertise requires recognizing that assessment is a skill in its own right that must be deliberately cultivated. The design of questions that genuinely assess legal analysis, as opposed to memorization, is not straightforward. A problem question, which presents a factual scenario and asks students to identify the legal issues, apply the relevant law, and advise a hypothetical client, is a common technique in common law legal education precisely because it assesses legal reasoning rather than memory. But designing a good problem question requires the assessor to have worked through the problem carefully, to have identified all the relevant legal issues, to know what an excellent answer would look like and how it would differ from a good or mediocre answer, and to have developed marking criteria that reliably distinguish these levels of performance. These are demanding requirements, and meeting them consistently across a law faculty requires investment in assessment design training, in the development and use of marking guidelines, and in moderation processes that check for consistency between markers.

The marking of legal assessments is equally problematic. Marking that genuinely assesses legal reasoning is time-consuming and demands sustained intellectual engagement with each student's response. It also requires clear criteria against which responses can be evaluated. Without clear criteria, marking becomes highly subjective, with different examiners applying different implicit standards in ways that are neither fair to students nor valid as measures of legal competence. In many Bangladeshi law programs, the marking load on individual faculty is very high, the time available for careful marking is very limited, and the institutional investment in developing shared marking criteria and moderation processes is minimal. The result is assessments whose validity as measures of legal competence is very limited, whose reliability is poor, and whose feedback function, the function of helping students understand where their legal understanding is strong or weak so that they can improve, is almost entirely absent.

The Bar Council enrollment examination shares many of these problems and in some respects exacerbates them. As Part Two discussed extensively, the enrollment examination has been criticized for its excessive emphasis on the memorization of statutory provisions, for the opacity of its marking, for the unreliability of the viva voce process, and for the lack of meaningful feedback available to unsuccessful candidates. From a pedagogical assessment theory perspective, the enrollment examination as currently designed is a poor instrument for its stated purpose of assessing professional competence. A genuinely competence-based assessment would evaluate candidates across the full range of skills required for professional practice: not just knowledge of substantive law, but the ability to apply that knowledge to novel factual situations, to conduct legal research, to draft legal documents, to communicate orally with clients and before courts, and to identify and manage ethical issues. These competencies require multiple assessment methods, not a single written examination, and they require assessors who are trained to evaluate them reliably and consistently.

Section 18.4: The Language Problem in Legal Education

An important dimension of the pedagogical problems in Bangladeshi legal education that is rarely addressed directly is the language problem. The formal language of the Bangladeshi legal system is English: statutes are drafted in English, superior court proceedings are conducted primarily in English, legal scholarship is written in English, and the professional examination

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papers are in English. But the language of instruction in many law programs, particularly at the National University college level, is Bengali, or a mixture of Bengali and English that produces graduates who are fluent in neither the technical legal English of the courts nor the sophisticated analytical Bengali that would be required if the legal system were to transition more thoroughly to Bengali. The result is graduates who are caught in a linguistic no-man's-land: not sufficiently competent in legal English to navigate the courts confidently, and not equipped with the technical legal vocabulary in Bengali that would allow them to practice if the courts were to shift to Bengali instruction.

This linguistic ambiguity has deep roots in the post-independence history of Bangladesh. The language movement of 1952, which asserted the right of the Bengali-speaking population of East Pakistan to use their language in official contexts, was a foundational moment of national consciousness, and the movement for Bengali as an official language has been a consistent thread in Bangladeshi public life ever since. At the same time, the legal system that Bangladesh inherited at independence was operating in English, and the international dimensions of commercial law, human rights law, and international law are conducted overwhelmingly in English. The tension between the legitimate cultural and democratic case for Bengali as the language of justice and the practical constraints of operating in a global legal environment has never been satisfactorily resolved.

From a legal education perspective, the consequence of this unresolved tension is that law programs vary widely in their language medium without any systematic rationale for why some teach in English and others in Bengali, and without adequate support for students who need to develop legal competence in English but whose prior education has not equipped them with sufficient English language proficiency. The skills required to read complex legal texts in English, to write legally precise documents in English, and to argue fluently in English before courts, are skills that require sustained and systematic development and that cannot be assumed at entry to a law program. Many Bangladeshi law students, particularly those from rural areas or from schools where English instruction is weak, enter law programs without the English language proficiency that professional legal practice will ultimately require of them. The law program they attend does little or nothing to address this deficit, partly because language development is not seen as a proper concern of law faculties and partly because the resources to support it are not available.

A reformed legal education system must address the language question directly. This does not necessarily mean mandating English as the sole medium of instruction in all law programs; there are strong pedagogical and democratic arguments for using the language that students are most proficient in as the primary medium of instruction, particularly at the foundational level. But it does mean providing systematic, supported development of legal English proficiency as a core component of professional legal education, recognizing that without this proficiency, graduates cannot function effectively in the legal system they are being trained to serve. And it means developing and deploying, in programs that use Bengali as the primary medium, the technical legal vocabulary in Bengali that would be required for this to be a viable professional language rather than a temporary expedient.

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CHAPTER NINETEEN: THE CURRICULUM OF LEGAL EDUCATION IN BANGLADESH: CONTENT, DESIGN, AND FAILURE

Section 19.1: The Standard Curriculum and Its Origins

The curriculum of a law degree in Bangladesh has remained remarkably stable over the past several decades, a stability that is itself diagnostic of the educational problems being analyzed. The standard LLB curriculum covers a relatively fixed set of subjects: constitutional law, contract law, tort law, criminal law, land law, civil procedure, criminal procedure, evidence, company law, family law (differentiated by religion), administrative law, and a small number of electives. This curriculum reflects the standard common law curriculum of the post-colonial era, inherited from the Indian LLB curriculum of the British period and modified only marginally since independence.

The intellectual genealogy of this curriculum is directly traceable to the English law school curriculum of the mid-twentieth century, which was itself shaped by the positivist tradition in legal philosophy and the institutional interests of a legal profession that valued doctrinal knowledge and technical skill above broader intellectual development. The so-called "core" or "foundational" subjects of the English law curriculum, contract, tort, criminal law, land law, constitutional and administrative law, equity and trusts, and the law of the European Union (now modified post-Brexit), were essentially defined in the mid-twentieth century and have been remarkably resistant to change despite sustained argument from legal education scholars that they represent an outdated and inadequate conception of what legal education should accomplish.

In Bangladesh, the inherited colonial curriculum has been preserved with even less modification than in England itself. England's law schools have, over the past five decades, developed extensive elective offerings in fields like human rights law, international commercial law, environmental law, competition law, banking and finance law, media law, sports law, and many others; they have integrated sociolegal perspectives into their teaching through subjects like criminology, law and society, and legal theory; and they have developed clinical and practical skills components that, while still inadequate by the standards of the most progressive legal educators, represent a significant addition to the pure doctrinal curriculum. Most Bangladeshi law programs have done none of these things in any systematic way.

The absence of subjects in contemporary and emerging legal fields is particularly striking. International law is covered inadequately or not at all in many programs. Environmental law, despite Bangladesh's extreme vulnerability to climate change and environmental degradation, is absent from most law program curricula. Intellectual property law, despite its growing importance in the digital economy that Bangladesh aspires to develop, is taught in very few programs. Labor law and employment rights, despite their centrality to the lives of most Bangladeshi citizens and to the enormous garment industry that is Bangladesh's primary export sector, are given inadequate attention. Cyber law and the legal dimensions of the digital economy are almost entirely absent from formal curricula, despite the Digital Security Act 2018 and the Cyber Security Act 2023 being subjects of enormous current controversy.

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The absence of human rights law as a distinct and substantial curriculum subject is especially troubling given the constitutional framework of Bangladesh. The 1972 Constitution contains an extensive bill of rights, and Bangladesh has ratified most of the major international human rights treaties. The ability to identify, articulate, and enforce human rights claims is therefore a fundamental professional competence for Bangladeshi lawyers, one that requires specific knowledge of the constitutional provisions, the international treaty framework, the jurisprudence of the Supreme Court on fundamental rights, and the mechanisms of human rights enforcement available in Bangladesh. Yet human rights law is either absent from or marginally treated in the formal curriculum of most law programs.

Jurisprudence and legal theory, which should be the philosophical spine of any serious legal education, occupying the position that the philosophy of science occupies in scientific education, is treated as an optional extra in most Bangladeshi law programs or is taught in a perfunctory way that conveys the major theoretical schools without engaging students in the genuine intellectual debate about the nature and purpose of law that jurisprudential study should inspire. The consequence is graduates who have learned a body of legal rules without understanding the theoretical framework that gives those rules their significance, their limitations, and their relationship to the broader project of justice that law is supposed to serve.

Section 19.2: The Two-Year LLB (Pass) Course: History, Function, and the Case for Abolition

The two-year LLB (Pass) course deserves dedicated analysis, because it was for many years one of the most significant pathways into the legal profession in Bangladesh and because its history illuminates many of the broader problems of legal education quality being analyzed in this Part.

The two-year LLB (Pass) course, sometimes called the LLB graduate course, was designed for graduates of other disciplines who wished to qualify for legal practice. A graduate in arts, science, commerce, or any other field could complete a two-year LLB program and then sit for the Bar Council enrollment examination. The program was offered at law colleges affiliated to the National University and at some other institutions, and it attracted large numbers of candidates for whom the law was a second choice or a later-life decision.

The theoretical justification for a graduate entry route to legal education is not without merit. Several of the world's most respected legal education systems operate primarily through graduate entry: in the United States, the JD degree is a three-year graduate program available only to those who already hold a first degree; in many civil law systems, law is a graduate program building on a first degree in a related field. The argument for graduate entry is that students who come to law with prior academic formation, whether in economics, history, political science, social science, or other disciplines, bring intellectual frameworks that enrich their legal analysis and that enable them to engage with the interdisciplinary dimensions of law more readily than students who come to law directly from secondary school.

But the two-year LLB (Pass) course in Bangladesh was not, in most of its implementations, a serious graduate entry legal education. The two years were too short to provide adequate coverage of the substantive law that a competent advocate needs to know; the institutions that

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offered it were often the weakest in the system; the faculty were frequently part-time and primarily engaged in practice; and the assessment system rewarded the same rote memorization that characterized the undergraduate program. The course became, in many institutions, a rapid-transit route into the legal profession for those who had failed to qualify for other professional opportunities, offered by institutions that had minimal academic infrastructure, and producing graduates who were, in many cases, less well prepared for professional practice than graduates of the four-year undergraduate program.

The Supreme Court's direction to abolish the two-year LLB (Pass) course was therefore jurisprudentially sound, even if its implementation was more complicated than a simple court order could resolve. The question that the abolition raised, and that has not been adequately addressed, is what should replace it for those who come to law as a second career or a later-life decision. The answer, which this commentary will develop in the reform chapters below, is a redesigned graduate entry program that takes seriously the graduate context of its students, uses the interdisciplinary background they bring as an asset rather than treating it as irrelevant, and provides genuinely rigorous legal education over a period that is adequate, not two years, to develop professional competence.

Section 19.3: The National University Colleges: A System Without Governance

The National University law college sector is, in terms of the number of students it educates, the largest component of the Bangladeshi legal education system. It is also, in terms of the quality and consistency of its educational provision, the most problematic. The problems of this sector are both structural and cultural, and they are deeply resistant to simple administrative solutions.

Structurally, the National University law colleges face the following interconnected challenges. First, they are inadequately resourced for the educational function they are supposed to perform. Library resources are typically minimal: the kind of well-stocked law library that would enable students to conduct independent legal research, with comprehensive collections of law reports, statutes, academic journals, and standard legal textbooks, is the exception rather than the rule. Physical infrastructure, including lecture rooms, seminar rooms, and student study spaces, is often inadequate for the number of students enrolled. Information technology resources are insufficient, and access to online legal databases is not systematically provided.

Second, the faculty of many National University law colleges are primarily part-time practitioners who have been engaged to teach specific subjects but who have neither the time nor the inclination to invest in the development of their teaching, in curriculum innovation, or in research. This is not a criticism of individual practitioners who teach part-time: practicing lawyers who bring their practical experience into the classroom can make an important contribution to legal education, particularly in the teaching of procedural subjects where practical knowledge is at a premium. The problem arises when part-time practitioners are the primary or sole faculty of a law program, without a core of full-time academic staff whose primary professional commitment is to legal education and scholarship.

Third, the quality assurance mechanisms of the National University are genuinely inadequate for the task of monitoring and maintaining educational quality across hundreds of affiliated

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institutions operating in diverse contexts across the country. The National University sets examination papers, marks examinations, and issues degrees. It does not, in practice, effectively monitor what happens in classrooms, how the curriculum is delivered, whether library resources are adequate, whether faculty qualifications meet prescribed standards, or whether graduates have actually developed the competencies the degree is supposed to certify. The gap between the formal standards prescribed by the National University and the actual practice in many affiliated law colleges is very large.

The cultural problem of the National University law college sector is equally important and harder to address through administrative mechanisms. The culture of many law colleges is not a culture of learning: it is a culture of credentialism, in which the degree is understood as a formal qualification rather than as the product of genuine intellectual development. Students in this culture attend enough to avoid formal difficulties, learn enough to pass the examination, and do not invest in developing genuine legal competence because the incentive structure does not reward such investment. Faculty in this culture teach enough to discharge their formal obligations but do not invest in curriculum development, in research, or in innovative pedagogy because these are not recognized or rewarded. The culture is self-reinforcing: students who learned in this way become the lawyers who teach in this way, who produce the next generation of students who learn in this way.

Breaking this cultural cycle requires sustained investment in the development of a different culture, one that values genuine learning, that rewards intellectual seriousness, and that provides the conditions under which both students and teachers can invest in developing real competence. This is a long-term project that cannot be accomplished by any single reform measure. But it can be initiated by the right combination of structural changes, financial incentives, and governance reforms, and it must be initiated if the legal education system is to serve its public interest function.

Section 19.4: Clinical Legal Education: The Missing Dimension

Clinical legal education, the supervised engagement of law students in real or simulated legal work for the purpose of developing professional skills and providing legal services to underserved communities, is the dimension most conspicuously absent from the majority of Bangladeshi law programs. Its importance and its near-total absence deserve careful analysis.

The case for clinical legal education has been made extensively in comparative legal education scholarship and the central arguments can be summarized as follows. Legal competence is a form of professional expertise that combines theoretical knowledge with practical judgment. Practical judgment, in law as in medicine, can only be developed through supervised practice: no amount of reading about how to interview a client, draft a contract, or argue before a court will develop the same level of competence as actually performing these tasks under expert supervision with specific feedback on performance. This is not a controversial pedagogical claim; it is well-supported by learning theory and by the extensive empirical evidence accumulated through decades of clinical legal education practice in the United States, the United Kingdom, Australia, India, and elsewhere.

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The access to justice dimension of clinical legal education is equally important, particularly in a country like Bangladesh where the gulf between the legal needs of the population and the legal services actually available is enormous. Law school clinics that provide free legal services to those who cannot afford lawyers address real justice needs while simultaneously providing students with genuine professional experience. This dual function, educating students while serving justice, makes clinical legal education one of the most efficient investments a legal education system can make.

The 2025 comparative study published in the Journal of Legal Education, cited in the search results for this Part, comparing clinical legal education in India and Bangladesh, identifies three central challenges to the development of clinical legal education in Bangladesh: the inadequacy of institutional support within law schools, the absence of sustained funding sources, and the failure of legal education regulators to take seriously their responsibility to bridge the gap between academia and practice. All three of these challenges are genuine and must be addressed in any serious reform agenda. But their presence does not explain the near-total absence of clinical legal education from most Bangladeshi law programs; that absence reflects a more fundamental failure of vision about what legal education is for and what it should accomplish.

The model of clinical legal education that is most appropriate for Bangladesh requires adaptation of global best practice to local conditions. In the United States, law school clinics are typically housed within the law school, staffed by clinical faculty who supervise students working on real cases with real clients. This model presupposes a level of institutional infrastructure, financial resources, and regulatory support that is not currently available in most Bangladeshi law schools. The adaptation required is not a reduction in ambition but a creative reconfiguration of the same essential elements.

One proven adaptation is the externship or field placement model, in which students are placed with external organizations, including courts, legal aid organizations, NGOs, government law offices, and law firms, for supervised practical experience. This model requires less institutional infrastructure than the in-house clinic model because it uses the external organization's facilities and personnel, with the law school providing academic support, supervision frameworks, and reflective seminars. Externship programs can be implemented even by relatively resource-constrained law programs if the necessary relationships with external organizations are developed and the academic supervision framework is in place.

A second adaptation is the in-house simulation clinic, which uses simulated clients and cases to develop clinical skills without the ethical and liability complications of real client work. Simulations can be sophisticated enough to provide very realistic professional experience, and they have the advantage of being controllable from a pedagogical perspective: the supervisor can design the simulated scenario to address specific learning objectives and can intervene in the simulation in ways that would not be possible in a real client interaction. Simulation-based clinical education is widely used in medical education and is increasingly used in legal education. For Bangladeshi law programs that lack the infrastructure for real client clinics, simulation-based clinical education represents an accessible entry point.

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The absence of clinical legal education from most Bangladeshi law programs is not simply a resource problem. It reflects a conceptual failure: the failure to recognize that practical skills are a core component of professional competence that legal education has a responsibility to develop. When this conceptual failure is corrected, the resource problem becomes a problem to be solved rather than an excuse for inaction.

CHAPTER TWENTY: THE PRIVATE UNIVERSITY SECTOR IN LEGAL EDUCATION: EXCELLENCE, MEDIOCRITY, AND REGULATORY FAILURE

Section 20.1: The Spectrum of Quality in Private University Legal Education

The private university sector presents a more complex picture than the National University college sector, because its range of quality is far wider. At one end of the spectrum are institutions that have made serious investments in legal education, that employ faculty with strong academic credentials, that provide clinical and practical learning opportunities, that maintain adequate library resources, and that produce graduates who are genuinely educated in the law. At the other end are institutions that exist primarily for commercial reasons, that have adequate formal compliance with regulatory requirements but minimal genuine educational substance, and that produce graduates whose actual legal competence is very limited.

BRAC University's Department of Law represents the upper end of the spectrum most clearly. Established with support from BRAC, one of the largest development organizations in the world, the department has built a program that combines rigorous doctrinal teaching with a strong emphasis on social justice, human rights, clinical legal education, and interdisciplinary perspectives. It has attracted faculty with advanced degrees from reputable institutions, maintained small class sizes that enable genuine pedagogical engagement, and developed relationships with legal aid organizations, courts, and other external partners that provide students with genuine practical experience. Its graduates are among the most capable in the Bangladeshi legal profession.

North South University, Independent University Bangladesh, East West University, and a handful of other private institutions have similarly invested in developing genuine legal education programs, though the quality and emphasis vary between them. What these institutions share is a recognition that legal education quality requires sustained investment, that the competition for the best students requires demonstrating genuine educational value, and that building a reputation for quality is a long-term strategic asset that justifies the short-term costs of maintaining high standards.

The majority of the private university sector occupies a much more problematic middle ground. These are institutions that have established law departments, that comply formally with the University Grants Commission's minimum requirements, but that have not made the sustained investments in faculty development, library resources, clinical infrastructure, and curriculum innovation that would be required to offer genuinely high-quality legal education. Their

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graduates vary enormously in quality, depending on the individual quality of the faculty member who happened to teach them and the degree of self-directed learning the student invested in.

The lowest end of the private university spectrum consists of institutions that are operating essentially as degree mills: their compliance with regulatory requirements is formal rather than substantive, their faculty are either inadequately qualified or are employed primarily as credentialing devices rather than as genuine teachers, their assessment processes have minimal validity as measures of legal competence, and their graduates are produced in commercial quantities with no serious expectation that they have developed genuine legal knowledge or skills. These institutions exist because the regulatory framework permits them to exist: the University Grants Commission's enforcement capacity is limited, the Bar Council has not established effective quality thresholds for the degrees it will recognize, and the political economy of private university regulation makes aggressive enforcement difficult.

Section 20.2: The University Grants Commission and the Failure of External Quality Assurance

The University Grants Commission of Bangladesh is the primary external regulatory body for university-level education, including legal education in the private university sector. Its mandate includes setting minimum standards for programs, approving new programs, conducting institutional reviews, and enforcing compliance with prescribed standards. Its performance of these functions in relation to legal education has been inadequate.

The fundamental problem of the UGC's approach to quality assurance is that it has focused primarily on inputs, whether institutions have adequate faculty numbers, library resources, and physical infrastructure, rather than on outcomes, whether students are actually developing the knowledge and skills they need. This input-based approach to quality assurance is widely recognized in higher education quality assurance literature as insufficient: an institution can satisfy all input requirements while delivering education of very poor quality, because the relationship between resource inputs and educational outcomes is neither direct nor automatic. It depends critically on how resources are used, how teaching is organized, and what the culture of the institution supports.

A move from input-based to outcomes-based quality assurance in legal education would require the UGC to develop measures of student learning outcomes, to establish mechanisms for assessing whether programs are actually developing the competencies they claim to develop, and to use the results of these assessments in its decisions about program approval and institutional review. This is a more demanding form of quality assurance than the current approach, but it is the form that is most likely to drive genuine improvement in educational quality.

The UGC also faces significant capacity constraints. It is a relatively small institution governing a large and diverse higher education sector. The number of staff it employs is insufficient for comprehensive monitoring of the hundreds of institutions and thousands of programs for which it is responsible. Strengthening the UGC's capacity, both in terms of staff numbers and in terms of the methodological sophistication of its quality assurance processes, is a necessary component of any serious legal education reform agenda.

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The relationship between the UGC and the Bar Council in the regulation of legal education is also problematic. The Bar Council determines which degrees qualify holders to sit for the enrollment examination and thus to enter the profession. The UGC determines which programs are authorized to award those degrees. But the two bodies do not operate with a shared understanding of what quality in legal education requires, and neither body has developed systematic mechanisms for assessing whether graduates of specific programs actually have the competencies required for professional practice. The result is a regulatory gap at precisely the most important point in the system: the junction between legal education and professional entry.

Section 20.3: The Accreditation Reform Proposal

The fundamental reform required in the governance of legal education quality is the development of a specialized accreditation system for law programs, distinct from the general UGC quality assurance system and operated by a body with specific expertise in legal education and professional competence assessment. This is the model that has been adopted in most comparable legal systems: in the United States, law school accreditation is performed by the American Bar Association, which has developed detailed accreditation standards specifically for legal education; in England and Wales, legal education is overseen by the Solicitors Regulation Authority and the Bar Standards Board, which have developed specific requirements for the degrees and programs they recognize; in Australia, the Council of Australian Law Deans and the professional admitting authorities collaborate on accreditation standards for law programs.

A Bangladeshi law program accreditation system should be jointly operated by the UGC and the Bar Council, with the involvement of the law schools themselves through their academic bodies. Its standards should be outcomes-based: they should specify the knowledge, skills, and competencies that graduates of accredited programs should have developed, and they should require law programs to demonstrate through evidence, including assessment data, employer feedback, and graduate destination information, that their graduates are actually developing these competencies.

The accreditation system should include periodic site visits to law programs by accreditation panels that include experienced legal educators, practicing lawyers and judges, and lay members representing the public interest in legal services. These visits should examine not only the formal compliance of programs with prescribed standards but the actual quality of teaching, the intellectual culture of the law faculty, the adequacy of library and other learning resources, the design and implementation of assessment, and the provision of student support services. The findings of accreditation panels should be published, so that prospective students, employers, and the public can make informed judgments about the quality of different programs.

Accreditation should be time-limited and subject to periodic renewal, with the possibility of conditional accreditation for programs that have identified weaknesses but demonstrate credible improvement plans, and with the possibility of withdrawal of accreditation from programs that persistently fail to meet the required standards. The withdrawal of accreditation should have real consequences: graduates of non-accredited programs should not be eligible to sit for the Bar Council enrollment examination, which would provide a powerful incentive for institutions to maintain the standards required for accreditation.

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This accreditation reform is ambitious, and its implementation will require sustained effort and investment. But it is the kind of systemic reform that is needed if the quality problems of the private university legal education sector are to be addressed at their structural root rather than managed through ad hoc interventions.

CHAPTER TWENTY-ONE: THE ACADEMIC CULTURE PROBLEM IN BANGLADESHI LEGAL EDUCATION

Section 21.1: Legal Scholarship and its Absence

One of the most telling indicators of the state of legal education in Bangladesh is the state of legal scholarship. Legal scholarship, the production of original academic work that analyzes law, identifies its problems, explores its philosophical foundations, and proposes reforms, is both a product of a healthy legal education system and a necessary input to its ongoing development. A law faculty that produces no scholarship is a faculty that has no intellectual life, and a faculty without intellectual life cannot provide its students with an education that goes beyond vocational training.

The state of legal scholarship in Bangladesh is not encouraging. The number of peer-reviewed academic law journals published in Bangladesh is very small, and those that exist are not consistently published on regular schedules or indexed in international databases. The number of law faculty members in Bangladesh with doctoral qualifications from reputable research universities, either in Bangladesh or abroad, is a small fraction of the total. The institutional support for legal research, in terms of research leave, research funding, library resources, and recognition in promotion and tenure decisions, is inadequate in most law programs.

This is not to say that there is no legal scholarship produced in Bangladesh; there are individuals who produce work of genuine quality, and some of it is published in international journals. But these individuals are exceptions operating against the institutional grain rather than participants in a supportive academic culture. The majority of law faculty in Bangladesh are engaged primarily in teaching and, in many cases, in practice, and the expectation of research output is not systematically enforced or institutionally supported.

The causes of this scholarly deficit are multiple. The colonial legacy has something to do with it: the British legal education system, whose institutional culture was transplanted to Bengal, was itself not characterized by a strong research culture until relatively recently. The English common law tradition valued the practitioner over the academic, and the idea of the law professor as a research scholar producing original knowledge, rather than as an experienced practitioner who organized and transmitted the knowledge of the profession, was not fully established in England until the second half of the twentieth century. Bangladesh inherited this practitioner-centered culture without the subsequent shift toward a research culture that transformed English and American law schools in the post-war period.

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The academic salary structure reinforces the scholarly deficit. Law faculty salaries at most Bangladeshi institutions, particularly in the National University college sector, are not sufficient to attract or retain the most capable individuals, who can earn considerably more in private practice or in the corporate sector. The institutions that offer the best salaries, primarily the top private universities, have attracted some faculty with stronger academic credentials, but even these institutions have not fully developed the research culture that would make them significant producers of legal scholarship. The University Grants Commission's recent attention to research output as a factor in institutional assessment may create some incentive for improvement, but the structural conditions required for a genuine research culture, including research time, research support infrastructure, and a community of scholars engaged in sustained intellectual exchange, remain largely absent.

Section 21.2: The Moot Court Tradition and its Limitations

Moot court competitions, in which students argue simulated appeals before panels of judges drawn from the judiciary and the practicing bar, are one of the few aspects of legal education in Bangladesh that are genuinely widespread and that have genuine pedagogical value. The mooting tradition has deep roots in the English legal education system and in the culture of the common law bar. At its best, a moot court competition requires students to research a legal problem thoroughly, to construct coherent legal arguments on both sides, to present those arguments clearly and persuasively in an oral format, and to respond effectively to questions from the bench. These are all genuinely valuable legal skills that classroom teaching rarely develops.

The value of moot courts should not be underestimated. Many of the most capable young lawyers in Bangladesh identify their participation in moot court competitions as the most valuable part of their legal education, precisely because it required them to develop analytical and advocacy skills that their formal courses did not. The international moot court competitions in which Bangladeshi students participate, including the Philip C. Jessup International Law Moot Court Competition, the Willem C. Vis International Commercial Arbitration Moot, and regional competitions in Asia, have produced graduates who are competitive with law students from much more resource-rich legal education systems, a testament to what motivated students with access to meaningful skills development can achieve.

However, the moot court tradition in Bangladesh has significant limitations as a mechanism for developing practical legal skills across the law student population. Participation in moot courts is typically voluntary and selective: only a small fraction of law students, typically those who are already the most capable and motivated, participate in mooting competitions. The majority of students graduate without ever having argued in a moot court or developed their oral advocacy skills through any structured format. This means that one of the most valuable practical learning experiences in Bangladeshi legal education is available only to a small elite of particularly engaged students.

The integration of moot court and other oral advocacy training into the compulsory curriculum, rather than treating it as a co-curricular activity for the most enthusiastic students, would represent a significant improvement. If every law student were required to participate in at least

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one moot court experience during their degree program, supported by preparation that develops the relevant research and argumentation skills, the aggregate impact on the practical competence of law graduates would be substantial.

Section 21.3: The Research Skills Deficit

The deficit in legal research skills among Bangladeshi law graduates deserves particular attention, because legal research is a foundational professional competence that underlies almost every other aspect of legal practice. A lawyer who cannot research the law effectively cannot give accurate advice, cannot draft documents that reflect the current state of the law, cannot construct arguments that engage with relevant authorities, and cannot identify the legal issues in novel factual situations. Legal research is not the same as knowing the law: it is the ability to find out what the law is on any given question, to evaluate the quality and relevance of different legal sources, to synthesize information from multiple sources into a coherent analysis, and to identify the gaps or uncertainties in the law that a particular situation raises.

The research skills deficit in Bangladeshi legal education has multiple components. The absence of a legal research culture in most law faculties, discussed in the previous section, means that students are not immersed in an environment where research is valued and practiced. The inadequacy of library resources means that students do not have access to the raw materials of legal research. The assessment system's focus on memorization means that the incentive to develop research skills is weak. And the formal curriculum rarely includes dedicated instruction in legal research methods, systematic engagement with law library resources, or assignments that require genuine independent legal research rather than the synthesis of classroom notes.

The Commonwealth Chamber interview cited in the search results for this Part quotes a distinguished legal academic and judge expressing the problem with striking clarity: legal research "remains a neglected field in Bangladesh" and "we only learn the fundamentals of conducting legal research when we go abroad for postgraduate studies." This observation encapsulates the research skills deficit with painful precision: the competency that is most fundamental to independent legal practice is one that most Bangladeshi law graduates must develop after and outside their formal legal education, either through painful practical experience or through the accident of postgraduate study elsewhere. This is not merely an educational failure; it is a professional failure and a justice failure, because lawyers who cannot research effectively cannot serve their clients adequately.

CHAPTER TWENTY-TWO: THE FACULTY DEVELOPMENT CRISIS

Section 22.1: Who Teaches Law in Bangladesh

The quality of a legal education system depends, more than any other single factor, on the quality of those who teach in it. This is not a revolutionary observation; it is a commonplace of educational research. But it has direct and important implications for Bangladesh, because the

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qualifications, development, and working conditions of law faculty are among the least-addressed dimensions of the legal education reform debate.

The profile of law faculty in Bangladesh is highly heterogeneous. At the top of the hierarchy are a small number of professors at the leading public and private universities who have doctoral qualifications from reputable institutions, who have published in international academic journals, who are engaged in ongoing research, and who teach with a level of analytical sophistication that genuinely challenges their students. These individuals are doing important work, and some of them are producing legal scholarship of real quality. But they are a small minority of the total population of law teachers in Bangladesh.

The majority of law teachers at the university level are graduates of Bangladeshi law programs who have proceeded to academic appointments without doctoral qualifications and without systematic training in legal pedagogy. They teach from their knowledge of the doctrinal law they studied, supplemented by their practical experience where they have it, and they prepare students primarily for the same kind of examinations they sat themselves. This is a pattern of reproduction that perpetuates the existing pedagogical culture rather than improving it: each generation of teachers teaches the way they were taught, and the deficits of the system compound over time.

At the National University college level, the faculty profile is even weaker. The typical law college teacher is a practicing lawyer who has been engaged on a part-time basis to teach one or more subjects. Their commitment to the teaching role is inevitably limited by the demands of their practice, and their capacity to invest in pedagogical development, curriculum innovation, or student supervision is correspondingly limited. The remuneration for part-time teaching is modest, and the institutional recognition of teaching quality as something worth investing in is minimal.

Section 22.2: The Need for a Faculty Development Framework

A reformed legal education system requires a systematic approach to faculty development that addresses the current qualifications deficit, supports the ongoing professional development of existing faculty, and creates the conditions for the development of a genuinely capable legal academic community in Bangladesh.

The long-term solution to the faculty qualifications deficit is a sustained investment in doctoral education for law academics. This requires, first, the development of genuine research doctorate programs in law at the leading Bangladeshi universities, programs that are different in character from the professional doctorates that are the subject of Part Eight of this textbook series, and that develop candidates' capacity for original legal scholarship through sustained engagement with legal theory, legal history, comparative law, and empirical legal research. It requires, second, a systematic program of scholarships and fellowships to support Bangladeshi legal academics in pursuing doctoral study, both at home and abroad, in research environments that can genuinely develop their scholarly capabilities.

The medium-term solution for existing faculty is a sustained program of pedagogical development. Legal pedagogy is a learned skill that requires specific training, and very few law

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teachers in Bangladesh have received systematic training in how to teach law effectively. A national legal education development program, organized by the Bar Council and the UGC in partnership with the leading law schools, should provide regular training for law teachers in curriculum design, teaching methods, assessment design, clinical legal education, and legal research methodology. This program should include both initial training for new law teachers and ongoing professional development for experienced ones.

The working conditions of law academics also need fundamental reform. Academic salaries, particularly at the National University college level but also at many university law departments, are insufficient to attract and retain capable individuals who have other professionally attractive options. The expectation that academic positions are compatible with full-time professional practice, which is embedded in the culture of many law programs, needs to be reconsidered. Full-time academic work, which requires the sustained intellectual investment in teaching, scholarship, and curriculum development that quality legal education demands, cannot be combined with a full-time legal practice. The two activities are not complementary but competing, and the attempt to maintain both simultaneously results in inadequate performance of both.

The reform of academic working conditions in law will require financial resources that the government has not historically been willing to commit to academic salaries in the public university sector. But the cost of inadequate legal education, in terms of an underprepared legal profession, an inaccessible justice system, and the foregone economic and social value of a competent rule of law environment, far exceeds the cost of the investment in faculty development and academic compensation that quality legal education requires.

Section 22.3: Legal Academic Identity and the Practitioner-Scholar Tension

The tension between the practitioner model and the scholar model of legal academic identity is one of the most productive intellectual tensions in the global legal education discourse, and it deserves more serious engagement in Bangladesh than it has so far received. The position that law is ultimately a practical discipline and that law teaching should be predominantly in the hands of those with substantial practice experience is not without merit; there is genuine pedagogical value in the practitioner's knowledge of how law actually operates in the real world, as distinct from how it appears in the law reports and the academic textbooks. But the position that law is also a discipline of ideas, that it has philosophical, historical, comparative, and sociological dimensions that require scholarly expertise to teach adequately, and that the development of students' capacity for legal analysis requires engagement with the discipline as an intellectual enterprise rather than merely as a technical skill, is equally compelling.

The resolution of this tension in the most successful legal education systems is not to choose one model over the other but to create the conditions for genuine collaboration between practitioners and scholars: faculty who are primarily scholars but who maintain sufficient engagement with practice to understand the professional dimensions of what they teach, and practitioners who contribute to legal education in appropriately structured ways that leverage their practical expertise while maintaining the intellectual standards of the academic context. Creating these conditions in Bangladesh requires both institutional reform and cultural change: a reform of

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faculty appointment and reward structures that values and recognizes the scholar role, and a cultural shift in the profession's understanding of academic legal work as a legitimate and valuable form of professional engagement with law.

CHAPTER TWENTY-THREE: THE ADMISSION SYSTEM FOR LEGAL EDUCATION: THE CASE FOR A NATIONAL TEST

Section 23.1: The Current Admission System and its Failures

The admission of students to law programs in Bangladesh is currently governed by a combination of national examination results and institution-specific processes that vary enormously between institutions. At the public universities, admission is generally determined by a combination of HSC examination results and an institution-specific written admission test, administered by each university separately and covering general knowledge, English language proficiency, and sometimes subject-specific knowledge. At private universities, admission criteria vary from rigorous, involving competitive tests and interviews, to minimal, where any student with the basic HSC qualifications is admitted. At National University colleges, admission is largely based on HSC results alone.

This fragmented system produces several significant problems. First, it provides no consistent signal about minimum standards of academic preparation for legal education. Different institutions apply very different standards, and the result is a law student population that ranges from the highly capable and academically well-prepared to the genuinely underprepared. This range creates pedagogical challenges that most law programs are not equipped to manage: teaching effectively to a class whose preparation spans several academic levels is very difficult, and the typical institutional response is to pitch teaching at the lowest common denominator, which fails the more capable students and does not actually bring the underprepared students up to the required level.

Second, the current admission system provides no mechanism for assessing aptitude for legal education specifically, as distinct from general academic performance. The skills required for successful legal education, strong reading comprehension, logical reasoning, analytical thinking, and clear writing, are not identical to the skills measured by the HSC examination, which is primarily a test of factual recall across a range of subjects. A student who performs well in the HSC may or may not have the specific analytical and reasoning abilities that legal education requires; conversely, a student who performed less well in the HSC because of specific difficulties with particular subjects may have strong legal aptitude that the HSC does not reveal. A legal education admission test designed to assess the specific abilities relevant to legal study would provide a more valid predictor of success in legal education than the general HSC result.

Third, the current system disadvantages students from less advantaged backgrounds who have attended lower-quality secondary schools and whose HSC results do not accurately reflect their actual abilities. This is a well-documented phenomenon in educational research: external examination results are significantly correlated with socioeconomic background because students

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from more affluent families have better-resourced schools, better private tutoring, and other advantages that inflate their examination performance relative to their underlying ability. An aptitude-based legal education admission test, particularly if supported by adequate preparation resources available to all candidates, could provide a more equitable selection mechanism than the current system.

Section 23.2: The Design Principles of a National LLB Admission Test

Part Four of this textbook, which will be the subject of a dedicated volume, will develop the detailed design of a national LLB admission test in full technical detail. The present Section confines itself to the design principles that should govern such a test, leaving the detailed specifications to Part Four.

The foundational design principle is that the test should measure the cognitive abilities that are predictive of success in legal education and legal practice: reading comprehension, logical reasoning, analytical thinking, and written expression. It should not measure prior knowledge of law, which would disadvantage students who have not had prior exposure to legal study and which tests something that legal education is designed to provide, not something students should bring to it. This principle distinguishes the proposed national LLB admission test from the Bar Council enrollment examination, which is designed to measure legal knowledge and professional competence acquired through legal education and training.

The test should be nationally standardized, administered by an independent body with no institutional interest in the outcome, conducted at multiple locations across the country to maximize geographic accessibility, and available at regular intervals, ideally at least twice a year, to allow students to schedule their applications to law programs around their other commitments. The results should be available to all accredited law programs, and institutions should be free to use the results in whatever way they determine is appropriate to their selection process, subject to the requirement that they publish their selection criteria transparently.

The test should be accompanied by preparation resources that are freely available to all candidates, so that preparation for the test is not contingent on access to expensive private coaching. This is both an equity principle and a validity principle: if the test results primarily reflect access to coaching rather than underlying ability, the test is not measuring what it is supposed to measure. The preparation resources should focus on developing the cognitive skills the test measures, not on familiarizing candidates with the specific format of the test questions.

Equity provisions should be integral to the design of the test, not an afterthought. These provisions should include accommodations for candidates with disabilities, special consideration procedures for candidates whose performance on the test day was affected by documented medical or personal circumstances, and a system of contextual assessment that takes into account the quality of the candidate's school when interpreting their test results. International experience with legal education admission testing, particularly the extensive literature on the Law School Admission Test used in the United States, provides a wealth of relevant evidence on both the validity of aptitude-based admission testing and the equity challenges that such testing must address.

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Section 23.3: The Institutional Governance of the National Test

The governance of the national LLB admission test is as important as its design. The independence and integrity of the test from institutional and political pressure is essential for its validity and public acceptance. The governance model should therefore insulate the test administration body from the influence of individual law programs, from the Bar Council, and from the government, all of which have interests that could potentially distort the test's operation.

The most appropriate governance model is an independent statutory body, established by legislation, with a Board of Governors that includes representation from the legal academy, the practicing profession, student interests, and lay members representing the public interest in equitable legal education admissions. The Board should be accountable to Parliament through an annual report and should operate under published governance standards that ensure transparency, conflict-of-interest management, and regular external review.

The test administration body should commission regular validity studies to assess whether the test is actually predicting success in legal education, using data on the relationship between test scores and academic performance in law programs. These studies should be published and should inform regular reviews of the test design and content. The body should also commission regular equity audits to assess whether the test is operating equitably across different demographic groups and regions, and should use the findings of these audits to improve both the test design and the support resources available to candidates from disadvantaged backgrounds.

The transition from the current fragmented admission system to a national test system requires careful management. Existing law programs should be consulted about the design and implementation of the test, and there should be an adequate transition period during which programs can adapt their admission processes to incorporate the test results. The transition should be phased, with the test introduced first on a voluntary basis so that programs can assess its value before committing to its use as a mandatory element of their selection process.

CHAPTER TWENTY-FOUR: THE FIVE-YEAR LLB PROGRAM AT THE UNIVERSITY OF DHAKA: AN EXAMINATION

Section 24.1: Historical Development and Current Structure

The University of Dhaka's Faculty of Law operates a five-year LLB (Hons.) program that is unique in the Bangladeshi system and that has long been regarded as the most prestigious pathway to the legal profession in Bangladesh. The historical origins of the five-year program lie in the tradition of the integrated undergraduate law degree, which treats law as a first degree pursued directly from secondary school over an extended period that allows for both breadth and depth in legal education. The five-year duration reflects a recognition that developing genuine legal competence requires more time than the four-year programs that most other universities offer, and that the breadth of coverage required in a country with the complexity of Bangladesh's legal system justifies the extended program.

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The Faculty of Law at Dhaka University has historically attracted the most academically capable students in the Bangladeshi system, partly because of its selectivity and partly because of its reputation. The quality of its graduates has, at its best, been genuinely high: successive generations of Supreme Court judges, leading advocates, legal academics, and senior civil servants have been produced by the Faculty. Its alumni include many of the most distinguished legal figures in Bangladesh's history.

However, the Faculty has not been immune to the problems affecting the broader legal education system. The five-year duration of the program, which is its most distinctive feature, does not by itself guarantee quality: five years of inadequate teaching is worse than four years of excellent teaching. The challenges of pedagogical conservatism, the black-letter law approach, the weak research culture, the assessment system that rewards memorization, and the inadequacy of practical skills development that affect the broader system are present at Dhaka's Faculty as well, though in less acute form than at the weaker institutions. The Faculty's physical infrastructure, particularly its library, is inadequate by international standards for a flagship law school. The academic salaries available at Dhaka University are not sufficient to attract and retain the most capable scholars, some of whom are drawn away to better-paid positions at private universities or abroad.

Section 24.2: The Case for Curriculum Reform at the Public Law Faculties

The reform of the curriculum at the public university law faculties, including Dhaka, Jahangirnagar, Rajshahi, Chittagong, and the others, is both the most institutionally tractable element of curriculum reform (because these are publicly funded institutions with a higher degree of government oversight than the private sector) and in some respects the most symbolically important (because these institutions set the standard to which the rest of the system aspires).

The curriculum reform needed at the public university law faculties involves several dimensions. The first is the introduction of mandatory clinical and practical skills components. Every student completing a law degree from a public university should have participated in at least one clinical experience, whether an in-house clinic, an external placement, or a structured simulation program, and should have completed formal training in legal research methods, legal writing, and oral advocacy. These should be assessed components of the degree, not optional extras.

The second dimension is the modernization of the elective curriculum to reflect the legal fields that are important in contemporary Bangladeshi society. Human rights law, environmental law, intellectual property law, cyber law, labor law, international trade law, and alternative dispute resolution should all be available as elective subjects and should be taught by faculty with genuine expertise in them. The development of this expertise may require the recruitment of new faculty, the retraining of existing faculty, and the development of teaching partnerships with practitioners who have relevant specialized knowledge.

The third dimension is the integration of jurisprudence and legal theory throughout the curriculum, not as a separate subject studied in isolation but as a dimension of the analysis of every substantive area of law. Every law teacher should be equipped, through faculty

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development, to bring theoretical and philosophical perspectives to bear on the specific legal rules they teach: to ask not only what the law is but why it is that way, whether it is justified, and what it would look like if the considerations that theorists like Dworkin, Rawls, Hart, or Sen brought to bear on the assessment of law were actually applied to it.

The fourth dimension is the development of comparative legal analysis as a systematic component of the curriculum. Bangladesh is not and cannot be a legal island: its commercial law operates in an international context, its human rights law is shaped by international treaty obligations, its constitutional law can learn from the constitutional developments of comparable democracies, and its reform agenda benefits from engagement with the experience of legal systems that have confronted similar challenges. Developing students' capacity for comparative legal thinking, for understanding how different legal systems have approached common problems and for drawing informed lessons from these comparative experiences, is a valuable educational investment that requires systematic curricular commitment.

CHAPTER TWENTY-FIVE: THE REFORM ARCHITECTURE FOR LEGAL EDUCATION

Section 25.1: The Philosophical Foundation of the Reform Proposal

The reform of legal education in Bangladesh must begin with a clear philosophical foundation: a statement of what legal education is for and what it should accomplish. Without this foundational clarity, reform proposals risk being piecemeal interventions that address symptoms without tackling causes, or that achieve improvements in some dimensions while inadvertently degrading others.

This commentary proposes the following foundational statement: legal education in Bangladesh exists to develop lawyers who are intellectually capable of understanding and applying the law with precision and creativity, ethically committed to the values of justice and the rule of law, practically equipped with the professional skills required to serve their clients competently and their profession with integrity, and civically oriented toward the contribution that the legal profession makes to democratic governance, access to justice, and the constitutional aspirations of Bangladeshi society.

This foundational statement has four components, and each is important. The intellectual dimension: lawyers must be able to think analytically, to reason from principle to specific application, to identify legal issues in complex factual situations, to research the law effectively, and to construct and evaluate legal arguments. Developing these intellectual capabilities requires a legal education that engages students as active thinkers rather than passive recipients of transmitted doctrine. The ethical dimension: lawyers must have internalized a genuine commitment to the values of their profession, not merely a formal understanding of the professional conduct rules. Developing ethical commitment requires a legal education that engages students with the moral foundations of law and the ethical dimensions of professional practice, not merely an ethics course that recites the rules. The practical dimension: lawyers must

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be able to do what lawyers do, to interview clients, research the law, draft documents, negotiate settlements, and argue cases. Developing practical competence requires supervised practice, not just classroom instruction. The civic dimension: lawyers are not merely service providers to individual clients; they are officers of the justice system and members of a profession with a public responsibility. Developing civic orientation requires a legal education that connects the study of law to its social context, that gives students a genuine understanding of the relationship between law and justice, and that inspires a sense of professional responsibility toward the broader community.

From this foundational statement, the specific reform proposals flow directly. Each reform addresses one or more of these four dimensions of legal education purpose, and the reform agenda as a whole aims to produce graduates who are strong in all four.

Section 25.2: The Proposed National Legal Education Framework

The overarching institutional reform needed is the development of a National Legal Education Framework: a statutory instrument that sets out the standards, governance arrangements, and support structures for legal education in Bangladesh across all institutions and all program types. The Framework should be developed by a National Legal Education Commission established by Parliament, with membership that includes representatives of the leading law schools, the Bar Council, the judiciary, the government, civil society, and independent experts in legal education. The Commission's work should be informed by extensive consultation with law students, law graduates, practicing lawyers, and the public.

The Framework should specify the following components. First, the minimum accreditation standards for recognized law programs, including standards relating to faculty qualifications, library and learning resources, clinical and practical skills education, assessment design, student support, and quality assurance processes. Second, the design principles and governance arrangements for the national LLB admission test. Third, the requirements for the national pupillage and practical training framework that connects legal education to professional entry, which is discussed more fully in Part Four and Part Five. Fourth, the continuing professional development framework that ensures that the education of lawyers does not end at enrollment. Fifth, the research and scholarship development framework that provides institutional support for legal research at the national level.

The Framework should be supported by financial resources: a Legal Education Development Fund, financed by a combination of government appropriation, levy on the legal profession, and contributions from the law schools themselves, and administered by the National Legal Education Commission. The Fund should support faculty development programs, the establishment of clinical legal education programs at under-resourced institutions, library development, curriculum reform initiatives, and legal education research.

Section 25.3: The Curriculum Standards

The National Legal Education Framework should specify minimum curriculum standards for recognized law programs. These standards should be expressed in terms of learning outcomes,

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specifying the knowledge, skills, and competencies that graduates must have developed, rather than in terms of specific subjects, specifying which courses must be included. Outcomes-based standards provide flexibility for individual programs to develop distinctive curricula while ensuring that all graduates meet a minimum standard of competence.

The minimum outcomes for recognized law programs should include, at minimum, the following. In terms of legal knowledge: graduates should have a thorough understanding of the constitutional and administrative law framework of Bangladesh, of the major areas of private law including contract, tort, property, and family law, of criminal law and procedure, and of the law of evidence. They should have familiarity with at least two specialist fields of contemporary legal practice and with the international legal framework within which Bangladeshi law operates. In terms of analytical skills: graduates should be able to identify legal issues in complex factual situations, research the law relevant to those issues effectively, construct coherent legal arguments, evaluate competing legal arguments, and reach reasoned legal conclusions. In terms of practical skills: graduates should be able to interview clients, draft basic legal documents, conduct legal research using both primary and secondary sources including electronic databases, present oral arguments, and identify and manage ethical issues in professional practice. In terms of professional values: graduates should have internalized a commitment to honesty, integrity, confidentiality, and the duty to the court that define the ethical obligations of legal practice, and should have a genuine understanding of the access to justice responsibilities of the legal profession.

These outcomes should be assessed through multiple mechanisms, not through a single end-of-program examination. Assessment of legal knowledge should involve a combination of written examination, research assignments, and problem-based assessments that require the application of legal knowledge to novel factual situations. Assessment of analytical skills should involve assignments that require genuine legal analysis, including mooting, problem-based research assignments, and critical essays on legal topics. Assessment of practical skills should involve clinical assessments, portfolio-based assessments of professional work products, and structured oral assessments. Assessment of professional values should involve reflection exercises, case studies involving ethical dilemmas, and engagement with the professional conduct rules in the context of realistic scenarios.

Section 25.4: The Clinical Education Mandate

The National Legal Education Framework should include a mandatory clinical education requirement: every recognized law program should be required to include a minimum number of clinical or work-based learning hours as a compulsory component of the degree. The specific minimum should be set through the accreditation process, taking into account the resources available to different types of programs, but it should be sufficiently substantial to make a genuine contribution to students' professional development, not a token gesture toward practical education.

The clinical education requirement should be supported by a national network of community legal education clinics, established under the auspices of the National Legal Education Commission and operated by the law schools in partnership with legal aid organizations, courts,

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local government bodies, and other institutions. These clinics should serve both an educational function, providing students with supervised practical experience, and an access to justice function, providing legal services to communities that cannot afford private legal representation. The dual function is both practically valuable and educationally powerful: students who understand from direct experience that their developing legal skills can make a real difference in the lives of real people are far more likely to develop the civic orientation toward the legal profession that the foundational statement of legal education purpose requires.

The legal aid clinic model has been successfully developed in India, particularly at institutions like the National Law School of India University in Bangalore, the National University of Juridical Sciences in Kolkata, and several other National Law Universities established under the National Law University system that India developed from the late 1980s onward. The Indian National Law University model is directly relevant to Bangladesh as a reform precedent, offering a template for how a national government can establish a network of high-quality law schools with genuine research and clinical education mandates, funded by the state but governed with institutional independence. The proposal for a National Law University of Bangladesh, modeled on the Indian NLU system and specifically designed to demonstrate what legal education of genuine quality looks like in the Bangladeshi context, is one of the specific reform proposals that deserves serious governmental consideration.

Section 25.5: The Two-Year Graduate Entry Program

The abolition of the two-year LLB (Pass) course, directed by the Supreme Court and endorsed in this commentary, should not leave the gate closed to those who come to law as a second career or later-life decision. The arguments for graduate entry to legal education are sound, and the specific problem with the two-year LLB (Pass) course was its inadequate length and quality, not the principle of graduate entry.

The replacement for the two-year LLB (Pass) course should be a three-year graduate entry LLB program, available to graduates of any recognized degree program who pass the national LLB admission test. The three-year duration should provide adequate time for genuine legal education, covering the foundational areas of law in depth, developing analytical and practical skills, and providing clinical experience. The program should be designed to capitalize on the interdisciplinary background that graduate entrants bring, offering elective and research components that draw on their prior fields of study, whether economics, science, humanities, social science, or any other discipline. The program should be offered at a limited number of accredited institutions with demonstrated capacity to provide the quality of education that graduate entrants deserve.

CHAPTER TWENTY-SIX: JURISPRUDENTIAL PERSPECTIVES ON LEGAL EDUCATION REFORM

Section 26.1: Dworkin, Principles, and the Purpose of Legal Education

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The jurisprudential tradition offers important resources for thinking about the purpose and design of legal education, resources that are underutilized in the policy discourse about legal education reform. Ronald Dworkin's account of legal reasoning, developed in his influential works Taking Rights Seriously, Law's Empire, and A Matter of Principle, has direct implications for how lawyers should be educated.

Dworkin's central argument is that legal reasoning is not merely the mechanical application of rules but the interpretive engagement with principles: principles of justice, fairness, and due process that give the rules of law their moral significance and that provide the resources for resolving the inevitable gaps and ambiguities in those rules. On Dworkin's account, a judge resolving a hard case is not simply choosing between possible interpretations arbitrarily but is engaged in a principled enterprise of fitting the decision to the best moral and political theory that makes sense of the existing legal materials. This account of legal reasoning has profound implications for legal education: if Dworkin is right, then educating lawyers to be competent legal reasoners requires not only teaching them the rules of law but developing their capacity for principled moral and political argument, their ability to identify the values at stake in legal decisions, and their willingness to engage with the philosophical dimensions of legal questions rather than retreating to technical formalism.

The black-letter law approach to legal education is, on Dworkin's account, fundamentally miseducative: it trains students to apply rules rather than to reason with principles, producing graduates who are technically competent in stable legal contexts but who are intellectually ill-equipped for the hard cases, the cases where the rules are unclear or conflicting, where new facts require extending existing doctrine, or where the application of existing rules would produce results that seem fundamentally unjust. And yet these hard cases are precisely where the quality of legal reasoning matters most, where the difference between a competent and an incompetent lawyer has the greatest impact on the outcome for the client and for justice.

The implication for legal education is that students must be taught to engage with law at the level of principles, not merely at the level of rules. This requires a curriculum that includes jurisprudence and legal theory as genuine components of every student's education, not optional extras for those with philosophical inclinations. It requires teaching methods that confront students with hard cases and require them to reason through the competing considerations rather than looking up the answer in a textbook. And it requires assessment that rewards principled argumentation rather than rule recitation.

Section 26.2: The Critical Legal Studies Perspective on Legal Education

The Critical Legal Studies movement, which developed primarily in American law schools in the 1970s and 1980s, has had less direct influence on Bangladeshi legal education, but the insights it developed about the relationship between legal education and professional ideology are relevant to the reform agenda.

Duncan Kennedy, Roberto Unger, Morton Horwitz, and the other central figures of the CLS movement argued that legal education in American law schools served a function of political socialization: it trained students to see legal doctrine as objective, neutral, and determinate,

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thereby concealing the political choices embedded in existing legal arrangements and reproducing an uncritical acceptance of the status quo. Kennedy's 1982 essay, mentioned earlier in this Part, argued that the Socratic method, the competitive classroom atmosphere, and the hidden curriculum of professional identity formation in American law schools all worked together to produce lawyers who were committed to the ideology of individual rights and formal equality while ignoring the structural inequalities that formal legal arrangements routinely produce and protect.

The CLS critique has important resonances in the Bangladeshi context, where the legal system has consistently served the interests of the economically powerful more effectively than the interests of the economically marginalized, where formal legal rights are routinely inaccessible to those who cannot afford legal representation, and where the independence of the legal profession from political power has been chronically compromised. A legal education that genuinely engages students with these realities, that requires them to think about whose interests the law serves and whose interests it fails to serve, and that develops a commitment to using legal skills in the service of justice rather than merely in the service of whatever client can pay the highest fee, is a very different educational project from the current one.

This is not to say that legal education should become political indoctrination: the CLS critics were themselves criticized for replacing one ideological approach with another. But there is a significant difference between a legal education that presents existing doctrine as the natural and inevitable expression of justice and one that teaches students to examine law critically, to understand its political dimensions, and to bring to their professional practice a genuine commitment to the constitutional values of equality, justice, and the rule of law that give the legal profession its public legitimacy.

Section 26.3: Amartya Sen's Capabilities Approach and Legal Education Equity

Amartya Sen's capabilities approach to justice, developed in The Idea of Justice, Inequality Reexamined, and Development as Freedom, provides a powerful framework for thinking about the equity dimensions of legal education reform. Sen argues that justice is best understood in terms of what people are actually able to do and be, their capabilities, rather than in terms of the formal rights or resources they possess. A formally equal legal education system that produces systematically unequal outcomes because students from disadvantaged backgrounds lack the capabilities, the supporting resources, the cultural capital, and the freedom from competing demands, necessary to benefit equally from the formal educational opportunity, is not a just system even if its rules are technically neutral.

The capabilities framework suggests that legal education reform must attend not only to the formal structure of educational provision but to the conditions under which students can actually exercise their formal educational opportunities. Students from rural areas, from low-income families, from communities where English is not spoken and where no one has previously studied law, face capability deficits relative to students from urban, affluent, professionally connected families that no improvement in the formal quality of the curriculum can by itself remedy. A just legal education system must invest in developing the capabilities of disadvantaged students through targeted support: language development programs, financial

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support during legal studies, mentorship from established lawyers, geographic accessibility of quality programs, and awareness-raising about the legal profession as a viable career option for those from backgrounds not traditionally represented in it.

The capabilities framework also provides a basis for evaluating the equity implications of the national LLB admission test proposed in this Part. If the test systematically disadvantages students from less privileged backgrounds, not because it measures abilities those students lack but because their performance is depressed by capability deficits that are remediable by appropriate support, then the test is unjust not in principle but in implementation. The appropriate response is not to abandon the test, which provides genuine information about legal aptitude, but to invest in the support that enables disadvantaged students to demonstrate their actual capabilities rather than the capabilities their background has so far allowed them to develop.

Section 26.4: Hart, Fuller, and the Inner Morality of Legal Education

The debate between H.L.A. Hart and Lon Fuller about the inner morality of law provides a less direct but still illuminating perspective on legal education. Fuller's argument, in The Morality of Law, that a legal system that aspires to be genuine law must satisfy certain internal standards of generality, publicity, prospectivity, clarity, consistency, practicability, stability, and congruence between rules and their application, was a claim about the procedural morality that distinguishes genuine law from arbitrary command.

Applied to legal education, Fuller's framework suggests that a genuine legal education, as opposed to a mere credentialing exercise, must satisfy analogous internal standards. It must be genuinely oriented toward the development of the competencies it claims to develop. It must be conducted publicly, with clear standards and transparent processes. It must be prospective in the sense of preparing students for the legal practice of the present and future, not merely transmitting the doctrinal arrangements of the past. It must be clear in its expectations of students and consistent in how it applies those expectations. It must be practically achievable, demanding real intellectual work but not imposing requirements that students cannot realistically meet with appropriate effort. And there must be congruence between what the education claims to accomplish and what it actually accomplishes, a standard that much current Bangladeshi legal education spectacularly fails to meet.

Fuller's framework also illuminates the moral problem with the current enrollment examination system: an examination that claims to assess professional competence but that actually assesses rote memorization of statutory provisions violates the Fullerian principle of congruence, because what the examination claims to measure is fundamentally different from what it actually measures. This violation of internal procedural standards is not merely a technical failing; it is a moral failing, because it misleads candidates about what is expected of them, misleads the profession and the public about the significance of passing the examination, and systematically selects for a skill, the ability to memorize, that is less useful in professional practice than the skills, principled legal reasoning and practical competence, that the examination purports to assess.

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CHAPTER TWENTY-SEVEN: THE NATIONAL LAW UNIVERSITY PROPOSAL AND ITS IMPLICATIONS

Section 27.1: The Indian National Law University Model as Reform Precedent

India's experience with the National Law Universities provides the most directly relevant comparative precedent for Bangladesh's legal education reform agenda. The first National Law School of India University was established in Bangalore in 1987, following a proposal by Dr. N.R. Madhava Menon that came to be regarded as the most significant single reform initiative in South Asian legal education history. The NLS Bangalore was designed from the outset to demonstrate what legal education of genuinely high quality could look like in the Indian context: a five-year integrated BA LLB program with competitive entry through a national admission test, a faculty committed to research and scholarly publication, a clinical legal education program serving the disadvantaged communities of Karnataka, a moot court culture of international quality, and an interdisciplinary curriculum that connected legal study to economics, political science, sociology, history, and jurisprudence.

The success of NLS Bangalore was remarkable by any standard. Within a decade of its establishment, it had become one of the most selective institutions of higher education in India, attracting applicants from across the country who competed intensely for a small number of places. Its graduates went on to occupy leadership positions in the Supreme Court of India, in leading Indian law firms, in international institutions, in academia, and in civil society. The quality of its legal scholarship, measured by publications in Indian and international journals, was significantly higher than that of any comparable Indian institution. Its clinical program provided real legal services to thousands of clients who would otherwise have had no access to justice.

The success of NLS Bangalore inspired the replication of the model across India: National Law Schools were subsequently established in Hyderabad, Bhopal, Kolkata, Jodhpur, Raipur, Bhopal, and multiple other cities, all drawing on the common admission test administered by the Consortium of NLUs through the Common Law Admission Test (CLAT). The NLU system has not been uniformly successful across all institutions, and the most recent NLUs face challenges of faculty development and institutional culture that the earlier, more established institutions have already worked through. But the model as a whole has transformed the discourse about legal education quality in India and has demonstrated that excellent legal education, with high admission standards, research-active faculty, strong clinical programs, and genuine interdisciplinary depth, is achievable in the South Asian context.

The parallels for Bangladesh are direct. Bangladesh needs the equivalent of an NLS Bangalore: one or more flagship institutions of legal education that demonstrate, through their actual operation, what legal education of genuinely high quality looks like in the Bangladeshi context, that attract the most capable law students through competitive national admission, that develop a research-active faculty committed to producing legal scholarship, that operate clinical programs

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serving disadvantaged communities, and that train the next generation of legal academics, practitioners, and judges that Bangladesh needs.

Section 27.2: The Proposal for a National Law University of Bangladesh

This commentary proposes the establishment of a National Law University of Bangladesh (NLUB) as a flagship institution of legal education, established by Parliament through a dedicated statute, governed by an independent Board of Governors, and funded through a combination of government appropriation and student fees. The NLUB should be designed from the outset to be a world-class institution of legal education, not a minor improvement on existing models.

The founding principles of the NLUB should reflect the foundational statement of legal education purpose articulated in Chapter Twenty-Five: intellectual excellence, ethical seriousness, practical competence, and civic orientation. Every aspect of the institution's design, from its admission process to its curriculum to its research culture to its clinical program to its governance, should be subordinated to these founding principles.

The NLUB should admit students through the national LLB admission test, supplemented by additional components such as written assessments and interviews designed specifically for the NLUB's context and academic aspirations. The intake should be selective, limited to a number that can be taught with genuine intensity and depth, approximately 250-300 students per year across a five-year program, giving an institutional size of roughly 1250-1500 students. This is small enough to maintain genuine pedagogical intensity and large enough to sustain a vibrant intellectual community.

The faculty of the NLUB should be recruited on the basis of academic excellence, with doctoral qualifications from reputable research universities and a demonstrated capacity for original legal scholarship as the primary selection criteria. The salaries offered should be competitive with those available in the private sector, enabling the NLUB to attract and retain the best legal academics in Bangladesh and to recruit from the diaspora of Bangladeshi legal scholars who are currently at institutions abroad. The NLUB's governance should give the faculty genuine autonomy in determining the curriculum, setting academic standards, and managing research programs, modeled on the university governance principles of academic freedom and institutional independence.

The NLUB's clinical program should be established from day one as a central component of the institution, not an afterthought. It should include an in-house clinical program providing legal services in the communities around the NLUB's campus, a network of external placements in courts, government law offices, NGOs, and law firms, and a structured simulation program that complements the real-client work. The clinical program should be led by full-time clinical faculty with both academic credentials and significant practical experience.

The NLUB should publish academic legal journals, organize scholarly conferences, run public lectures and events that engage the broader legal community and the public with legal issues, and serve as a center for legal reform research and advocacy. It should develop partnerships with

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leading law schools internationally, enabling student and faculty exchanges, collaborative research projects, and participation in international moot court competitions and other academic events. It should work actively to develop the legal education system more broadly, providing faculty development programs for teachers at other institutions, curriculum development resources, and assessment design support.

The location of the NLUB is a significant decision that should be made on the basis of pedagogical and strategic considerations rather than political ones. The NLUB should be accessible to students from across Bangladesh, not just from Dhaka. A location outside Dhaka, perhaps in Rajshahi, Chittagong, or another major city, would serve the additional purpose of demonstrating that quality legal education is not exclusively a Dhaka privilege and of contributing to the development of a strong legal culture in regions that are currently underserved. The NLUB should have a campus of its own, purpose-designed for its educational functions, with an excellent law library, clinical facilities, moot court rooms, research spaces, student accommodation, and the other physical infrastructure that a world-class institution requires.

CHAPTER TWENTY-EIGHT: LEGAL EDUCATION IN THE AGE OF TECHNOLOGY AND GLOBAL LEGAL PRACTICE

Section 28.1: Technology, Artificial Intelligence, and the Transformation of Legal Work

The reform of legal education in Bangladesh cannot be designed in isolation from the global technological transformation of legal work that is fundamentally changing what lawyers do and what skills the legal market values. The arrival of powerful artificial intelligence tools, including large language models capable of conducting legal research, drafting legal documents, and analyzing legal problems, is already affecting the legal profession in the technologically advanced jurisdictions and will reach Bangladesh within a generation if not sooner. A legal education system designed for the practice of law as it exists today will be inadequate for the practice of law as it will exist by the time today's law students reach the peak of their careers.

The most comprehensive analysis of the technological transformation of the legal profession remains Richard Susskind's work, particularly Tomorrow's Lawyers, which argues that most of the tasks currently performed by lawyers will, within the next two to three decades, be performed either by technology or by non-lawyers working with technology. Susskind's analysis identifies a spectrum of legal tasks ranging from the highly bespoke, requiring the exercise of professional judgment that is genuinely difficult to replicate, to the commoditized, which are routine and repetitive enough to be automated or systematized. His argument is that the commoditized end of the spectrum, which includes much of what newly enrolled lawyers currently spend most of their time doing, will increasingly be performed by technology, and that the lawyers who will thrive in the future are those who can perform the bespoke tasks, including complex advising, strategic decision-making, empathetic client counseling, and the management of genuinely novel legal situations, that technology cannot easily replicate.

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The implication for legal education is that training focused on the commoditized tasks, including the memorization of standard legal provisions, the mechanical drafting of standard documents, and the routine research of settled legal questions, is precisely the training least likely to prepare students for the legal profession of the future. Legal education that instead focuses on the analytical, empathetic, creative, and judgment-based dimensions of legal work, the dimensions that are hardest to automate, is the legal education that will remain valuable as technology transforms the legal market.

This is not a reason to ignore technology in legal education. On the contrary: a reformed legal education system should include systematic training in how to use legal technology tools effectively, how to evaluate the output of AI research tools critically, how to understand the limitations and biases of algorithmic legal analysis, and how to integrate technology into legal practice in ways that enhance rather than diminish the quality of service to clients. Legal technology literacy should be a required component of every law student's education, not a specialist elective.

The broader point is that the technological transformation of legal work strengthens rather than weakens the case for the reforms proposed in this Part. The black-letter law approach to legal education, which trains students to store and reproduce information, is made redundant not merely by its intellectual inadequacy but by the arrival of technology that can store and reproduce information far more efficiently than any human brain. The analytical, creative, and judgment-based approach to legal education that this commentary advocates is precisely the approach that equips students for the legal work that will remain distinctively human even as technology reshapes the rest.

Section 28.2: Internationalization of Legal Education

The internationalization of legal education is a global trend that Bangladesh's legal education system has engaged with very inadequately. Legal education has become increasingly international in two senses: the content of law has become more international, with international human rights law, international trade law, international environmental law, and international commercial law all playing significant roles in the daily practice of lawyers in every jurisdiction; and the process of legal education has become more international, with student and faculty mobility, collaborative research, and participation in international academic communities becoming increasingly important to the quality of legal education institutions.

Bangladesh's law schools have participated in this internationalization only at the margins. A small number of faculty have international academic credentials; a small number of students participate in international moot court competitions; a small number of research collaborations with foreign institutions exist. But systematic internationalization of the kind that characterizes the most successful law schools in Asia, including those in Singapore, Hong Kong, India's NLU system, and increasingly those in Southeast Asia, is absent.

The reform agenda for legal education should include a specific internationalization component. This should include the development of exchange programs with leading law schools internationally, the integration of international and comparative legal perspectives into the core

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curriculum, the development of joint degree programs with foreign institutions, the participation of Bangladeshi law schools in international research collaborations, and the active recruitment of foreign faculty and visiting scholars. The NLUB proposed in the previous section should be designed from the outset as an internationally engaged institution, and its governance structure should explicitly mandate internationalization as a strategic priority.

CONCLUDING SYNTHESIS OF PART THREE: THE TRANSFORMATION OF LEGAL EDUCATION AS A DEMOCRATIC IMPERATIVE

The argument of Part Three has been that the legal education system of Bangladesh is in a state of comprehensive crisis that cannot be addressed by piecemeal improvements but requires fundamental transformation: a transformation of the institutional architecture, the governance framework, the curriculum content, the pedagogical methods, the assessment systems, and the culture of legal academic life.

This transformation is not merely an educational project. It is a democratic project of the deepest significance. A democracy that operates under the rule of law requires a legal profession that is genuinely competent, genuinely ethical, and genuinely committed to the constitutional values of justice, equality, and human dignity. A legal profession of this quality can only be produced by a legal education system of comparable quality. And a legal education system of comparable quality can only be created through the kind of sustained, serious, and generationally committed reform effort that this Part has attempted to map out.

The connections between the reform of legal education and the reform of the Bar Council analyzed in Part Two are intimate and mutual. A reformed Bar Council, committed to genuine professional quality and genuine public service, will demand of the law schools that produce its members an education that actually develops the competencies it expects its members to have. In turn, reformed law schools that produce genuinely capable graduates will make the Bar Council's task of professional quality assurance more tractable, because the enrollment examination will be sorting among candidates who are genuinely prepared for professional practice rather than trying to compensate for the deficits of an inadequate education.

The reform of legal education is also intimately connected to the reform of the judiciary and the court system, which will be the subject of later Parts of this textbook. Judges are produced by the legal education system: their analytical capacity, their knowledge of the law, their understanding of constitutional values, and their commitment to judicial integrity are all shaped by the legal education they received. A legal education system that produces intellectually capable, ethically serious, and constitutionally committed graduates is the foundation on which a high-quality judiciary must ultimately rest.

The historical moment is propitious. As the concluding synthesis of Part Two observed, the July Uprising of 2024 and the reform process of 2024-2026 have created a genuine political opportunity for fundamental institutional change in Bangladesh. The constitutional reforms, the judicial reform agenda, and the broader democratic renewal agenda of the Yunus interim

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government and the political forces that support it all create space for the kind of ambitious reform of legal education that this Part has proposed. That space will not remain open indefinitely. The intellectual case for reform has been made many times and in many forms: by the Law Commission in 2006 and 2007, by the Supreme Court in 2016 and 2017, by legal academics and reformers in the pages of The Daily Star, Prothom Alo, and other publications, by international scholars engaged with the problems of Bangladeshi legal education. What has been missing is not the argument but the political will and institutional capacity to translate the argument into action.

The reform agenda proposed in this Part is ambitious but achievable. The establishment of a National Law University of Bangladesh, the development of a national LLB admission test, the creation of a specialized law program accreditation system, the development of a National Legal Education Framework, the mandating of clinical legal education across all recognized programs, the investment in faculty development and legal research culture: all of these are concrete, implementable reforms that comparable legal systems have implemented successfully. They require resources, political commitment, and sustained leadership. But they do not require anything that Bangladesh does not have the capacity to provide.

The legal profession of Bangladesh stands at a threshold. On one side is the continuation of a system that produces graduates who are inadequately prepared, that maintains a bar that too often fails its clients, and that operates a justice system that too often fails its citizens. On the other side is the possibility of a genuine profession: one that Bangladesh's citizens can trust to help them navigate the legal system with competence and integrity, that Bangladesh's courts can rely on to argue their cases with analytical rigor and ethical seriousness, and that Bangladesh's democracy can count on to be a defender of constitutional values and the rule of law. The threshold can be crossed. This Part has tried to show what crossing it requires. The rest depends on the resolve of the practitioners, academics, reformers, and political leaders who are in a position to act on the analysis this commentary has offered.

BIBLIOGRAPHICAL NOTES AND REFERENCES FOR PART THREE

The foundational primary sources for Part Three include the following. The Law Commission of Bangladesh's 2006 report, Review of Legal Education in Bangladesh, remains the most comprehensive official analysis of the legal education system and its weaknesses. Although it is nearly two decades old, its core critique of the black-letter approach, the inadequacy of practical skills education, and the failure of quality regulation in the private sector remains substantially accurate and has been confirmed by subsequent judicial, academic, and journalistic analysis. The Commission's follow-up reports have not significantly updated or superseded the 2006 analysis.

The two Supreme Court decisions analyzed in Chapter Sixteen, Professor Syed Ali Naki and others v Bangladesh and others (High Court Division, April 13, 2016) and Bangladesh Bar Council and others v A.K.M. Fazlul Kamir and others (Appellate Division, February 8, 2017), are the most authoritative judicial pronouncements on legal education quality and regulation in

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Bangladesh. Both decisions should be read in full by anyone engaged in the reform of legal education.

The Daily Star's legal affairs coverage, including the November 30, 2024, analysis of Bar Council reform and its treatment of legal education issues, provides essential contemporary documentation. Prothom Alo's February 17, 2025, op-ed on reforming Bar Council enrollment provides an important practitioner perspective on the examination system and its pedagogical failures.

The 2025 article in the Journal of Legal Education, Educating for Social Justice Lawyering and Community Legal Empowerment: Learnings from India and Bangladesh, by Ajay Pandey, Shireen Moti, and Sharin Shajahan Naomi, is the most recent comparative analysis of clinical legal education in South Asia and is directly relevant to the clinical education proposals in Chapter Twenty-Five.

The 2025 analysis of Bangladesh's higher education crisis, published in The Business of News, documents the broader context of the legal education quality problem within the national higher education system and provides statistical data on employment outcomes for graduates and the mismatch between educational supply and labor market demand.

From the comparative legal education literature, the key sources include: Harry W. Arthurs, Law and Learning: Report to the Social Sciences and Humanities Research Council of Canada (1983), which remains the most important single document in the modern discourse about the multiple purposes of legal education; William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (the Carnegie Report, 2007), which provides the most comprehensive recent analysis of the deficiencies of American legal education and the reforms needed, with many lessons applicable to Bangladesh; Roy Stuckey et al., Best Practices for Legal Education (2007), which translates the Carnegie Report's analysis into specific pedagogical recommendations; and Neil Gold, The Law Teacher (1982), which is the most comprehensive treatment of legal teaching methodology in the common law tradition.

On the Indian National Law University system, the key sources include K.L. Bhatia (ed.), Legal Education: Trends and Perspectives (2006); N.R. Madhava Menon's many writings on legal education reform, available through the National Law School of India University's publications; and the extensive reporting in Bar and Bench, LiveLaw, and other Indian legal news publications on the development of the NLU system.

On the jurisprudential dimensions of legal education, the key sources include Ronald Dworkin, Taking Rights Seriously (1977) and Law's Empire (1986); Lon Fuller, The Morality of Law (revised edition, 1969); Duncan Kennedy, Legal Education and the Reproduction of Hierarchy (1982, republished 2004); Roberto Mangabeira Unger, The Critical Legal Studies Movement (1986); and Amartya Sen, The Idea of Justice (2009), particularly Chapter Thirteen on legal pluralism and the capabilities approach to justice.

On the technological transformation of legal education, the key sources include Richard Susskind and Daniel Susskind, The Future of the Professions (2015); Richard Susskind,

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Tomorrow's Lawyers (second edition, 2017); and the growing literature on artificial intelligence in law, including Daniel Martin Katz, Michael James Bommarito II, and Josh Blackman, "A General Approach for Predicting the Behavior of the Supreme Court of the United States," published in PLoS ONE (2017), and the comprehensive review by Benjamin Alarie, Anthony Niblett, and Albert H. Yoon, "How Artificial Intelligence Will Affect the Practice of Law," in the University of Toronto Law Journal (2018).

END OF PART THREE

Part Four will undertake the detailed technical design of the national LLB admission test, developing the principles articulated in Chapter Twenty-Three into a complete institutional design: the test's cognitive architecture, the assessment science that underlies its design, the governance of the administering body, the equity provisions that ensure it operates fairly across Bangladesh's diverse student population, the transition framework for moving from the current fragmented admission system to the national test system, and the longitudinal validity studies needed to ensure the test continues to serve its intended purpose.

Part Five will develop the comprehensive curriculum reform proposal for Bangladeshi legal education: a detailed design for reformed curricula at undergraduate and graduate level, specific learning outcomes across all required competency areas, pedagogical standards for the delivery of each element of the reformed curriculum, assessment design principles, and a faculty development framework that supports the implementation of the reformed curriculum at institutions with varying levels of academic development.

Parts Six through Twelve will address, respectively: clinical legal education and access to justice in depth; the specialist accreditation framework and the development of legal specializations; the professional doctoral degree program and legal scholarship; personal law reform; the International Crimes Tribunal and transitional justice; the court system, case backlog, and procedural reform; and the future of Bangladesh's legal system in the global legal order.

This Part was composed with the most recent available data and analysis, including developments through April 2026, and draws on the constitutional reform process of 2024-2026, the Bangladesh Judiciary Reform Commission's reports of February 2025, the Supreme Court admission test jurisprudence, the July National Charter of October 2025, and the academic and journalistic commentary on legal education reform published through early 2026. The author acknowledges the contribution of legal academics, practitioners, students, and reformers across Bangladesh whose analysis and advocacy have shaped the reform agenda described in this Part.

PART FOUR: THE NATIONAL LLB ADMISSION TEST FOR BANGLADESH: ASSESSMENT SCIENCE, INSTITUTIONAL DESIGN, EQUITY, PHILOSOPHY, AND THE TRANSITION FROM THE PRESENT TO THE POSSIBLE

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PREFACE TO PART FOUR

Part Three of this commentary closed with a proposal that will strike some readers as bold and others as self-evident: the introduction of a nationally standardized admission test for entry into LLB programs across Bangladesh. Part Three articulated the foundational design principles of such a test, offered a preliminary account of the governance body needed to administer it, and identified the equity provisions without which no such test could be regarded as legitimate in a society as economically and geographically diverse as Bangladesh. Part Four now develops that proposal with the depth and technical detail that a serious reform instrument demands.

The argument of this Part is not merely institutional. It is philosophical, historical, jurisprudential, and political in equal measure. The decision to introduce a nationally standardized legal education admission test is not a neutral administrative act. It is a statement about what the legal profession is, who is entitled to aspire to membership in it, how the state ought to regulate the pipeline of professional formation, and what kinds of knowledge and ability are relevant to the determination of who should receive the scarce resource of quality legal education. Each of these questions has a rich intellectual history and a complex contemporary politics, and the design of a Bangladeshi national LLB admission test must engage seriously with all of them if it is to be a genuinely principled instrument rather than a borrowed mechanism applied without understanding.

The Part proceeds through a series of sustained analytical chapters. It begins with the philosophy and jurisprudence of admissions testing: the theoretical frameworks that bear on the question of how a just system ought to select among applicants for professional education. It then moves to the history of legal education admissions testing globally, with sustained attention to the American Law School Admission Test, the Indian Common Law Admission Test, the British approaches to legal education entry, and the lessons that each offers for the Bangladeshi context. From this comparative foundation, the Part builds the detailed design of the proposed Bangladesh Law Aptitude Test (BLAT), examining its cognitive architecture, its sectional structure, its scoring methodology, its psychometric properties, and its validation requirements. It then addresses the governance of the administering body in full institutional detail, including the statutory framework, the Board composition, the operational structure, and the accountability mechanisms. The equity analysis follows: a comprehensive examination of how demographic disparities in test performance arise, how they can be partially mitigated through test design, how they must be further addressed through contextual admissions practices and institutional support, and how they should be monitored through mandatory longitudinal studies. The Part concludes with the transition framework: a phased, carefully sequenced plan for moving from the current fragmented admission landscape to the national test system, managing the inevitable disruptions and resistances that any fundamental change in an established system will generate.

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Throughout, the analysis draws on the most recent developments in assessment science, legal education research, and psychometrics, including the 2021-2025 LSAT Correlation Study results published by the Law School Admission Council in 2025, the 2026 reform debates about the CLAT system in India in which approximately 90,000 students now participate annually, and the emerging literature on artificial intelligence and algorithmic assessment that is beginning to reshape the theory of educational testing in ways that Bangladeshi policymakers will need to engage with seriously in the medium term. The commentary is therefore not merely historical or comparative; it is a contribution to the living debate about how professional legal education should be regulated in societies that take seriously both the imperatives of quality and the demands of justice.

CHAPTER TWENTY-NINE: THE JURISPRUDENCE OF SELECTION: PHILOSOPHY AND POLITICAL THEORY OF ADMISSIONS

Section 29.1: Why Selection Matters for Justice

The question of how a society ought to select individuals for access to scarce professional education is not a technical question that can be answered by assessment scientists alone. It is a question of political philosophy and distributive justice that reaches to the foundations of how a society understands the relationship between individual merit, social opportunity, and collective welfare. Before designing any specific admission instrument, it is necessary to engage with this philosophical level seriously, because the design choices made at the technical level all embed philosophical commitments that ought to be made explicit and examined rather than assumed.

The dominant philosophical framework for thinking about professional admissions in modern liberal democracies is meritocracy: the idea that access to scarce educational and professional opportunities should be allocated on the basis of demonstrated ability and relevant achievement rather than on the basis of inherited privilege, social connection, or political favoritism. The meritocratic ideal has deep roots in the liberal political tradition: John Rawls, in A Theory of Justice, articulated the principle of fair equality of opportunity, which holds that individuals with equal talents and willingness to use them should have equal prospects of success in life regardless of their social class of origin. This principle condemns both the old aristocratic system of admission by birth and privilege and the corrupted forms of meritocracy in which ostensibly neutral measures of ability are systematically skewed by the advantages that wealth and social position provide.

The meritocratic ideal is deeply appealing, and it provides the strongest philosophical justification for standardized admission testing: if admission should be based on ability rather than privilege, then we need reliable measures of ability that can be applied consistently across candidates from diverse backgrounds, and a well-designed standardized test is a better measure of relevant ability than the social networks, the recommendation letters, or the interview performances that more informal selection processes favor. This is the core argument for standardized testing, and it is a genuine argument that deserves to be taken seriously rather than dismissed.

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But the meritocratic ideal has been subjected to powerful criticism that must be engaged before the case for standardized testing can be fully assessed. The most politically salient contemporary critique is that standardized tests do not measure ability neutrally but instead measure a combination of ability and the accumulated educational advantages that vary systematically with social class, geography, and family background. A student who grew up in a Dhaka household with educated parents, good schools, plentiful books, and access to private tutoring will typically perform better on a reading comprehension and logical reasoning test than a student of equal underlying intellectual ability who grew up in a rural household without these advantages. If the test score reflects accumulated advantage rather than underlying ability, using it as the primary selection criterion perpetuates rather than disrupts the inherited privilege that the meritocratic ideal was supposed to overcome.

This critique has particular force in Bangladesh, where the inequalities in educational opportunity are extreme. The difference in quality between the best urban private secondary schools and rural government secondary schools in Bangladesh is very large. The difference in access to English language instruction, which affects performance on tests that include English comprehension, is even larger. The difference in access to the kind of extended reading, analytical discussion, and intellectual stimulation that develops the reasoning skills that admission tests measure is also very large. These differences are not the fault of the students who grew up without access to good education; they are the consequences of a deeply unequal social structure. Using an admission test that does not account for these structural inequalities risks selecting primarily for social advantage rather than for intellectual potential.

A second philosophical critique of meritocratic admissions testing comes from the capabilities tradition associated with Amartya Sen and Martha Nussbaum, which was introduced in Part Three. The capabilities framework argues that justice requires attention not to formal equality of treatment but to the substantive freedoms and opportunities that individuals actually have. A test that is formally neutral but that systematically disadvantages those who lack the capability to develop the relevant skills because of the circumstances of their upbringing is not substantively just even if it is procedurally fair. On the capabilities approach, a genuinely just admissions system would not simply apply a neutral measure and accept whatever distribution of outcomes it produces, but would actively work to expand the capabilities of those whose current capabilities have been depressed by unjust social circumstances.

A third philosophical dimension is raised by the communitarian tradition, associated with thinkers like Michael Walzer and Charles Taylor, which emphasizes the importance of community membership and shared social identity in determining the appropriate distribution of social goods. From a communitarian perspective, the legal profession is not simply a collection of individually credentialed practitioners but a community with a shared culture, shared values, and a shared relationship to the broader society it serves. The composition of that community matters not only in terms of the individual abilities of its members but in terms of the diversity of perspectives, experiences, and social positions that its members bring. A legal profession composed primarily of graduates of elite urban institutions will understand the legal needs of the urban educated class much better than it will understand the needs of rural communities, of the poor, of women who face gender-based discrimination, or of ethnic minorities whose relationship to the formal legal system has been historically adversarial. Selection processes that

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perpetuate the social homogeneity of the legal profession therefore damage not only individual justice but the collective capacity of the profession to serve the full range of society's legal needs.

These philosophical tensions are not capable of complete resolution: they represent genuine value conflicts between meritocracy, equity, capability expansion, and communal diversity that any specific selection system will address imperfectly. The task of the designer of an admission test is not to pretend that these tensions do not exist or that the test design can dissolve them, but to make choices that are as well-reasoned and well-justified as possible given the genuine complexity of the situation. The Bangladesh Law Aptitude Test proposed in this Part is designed with full awareness of these tensions, and the equity provisions described in Chapter Thirty-Two are specifically designed to address the ways in which the test's results would, without such provisions, reflect accumulated social advantage rather than underlying intellectual potential.

Section 29.2: The Rawlsian Analysis of Legal Education Admissions

John Rawls's framework for distributive justice, developed in A Theory of Justice and elaborated in Political Liberalism and Justice as Fairness, provides the most systematic philosophical foundation for thinking about admissions to legal education. Rawls's framework is built on two principles of justice: the liberty principle, which holds that each person should have equal basic liberties; and the difference principle, which holds that social and economic inequalities are just only if they work to the benefit of the least advantaged members of society. These principles are to be applied within institutions governed by fair equality of opportunity, which requires that positions of advantage be genuinely open to all citizens on the basis of relevant qualifications rather than birth or inheritance.

Applied to legal education admissions, the Rawlsian framework generates the following analysis. The first principle requires that all citizens have equal formal rights to apply for admission to legal education; no one should be categorically excluded on the basis of gender, religion, ethnicity, or any other personal characteristic unrelated to legal aptitude. The fair equality of opportunity principle requires that those with equal legal aptitude should have equal prospects of gaining admission regardless of their social background: a student from a rural low-income family who has the same underlying intellectual potential as a student from an urban wealthy family should have the same realistic prospect of gaining admission. The difference principle requires that the distribution of places in legal education, and of the social advantages that legal qualifications confer, should be organized so as to work to the benefit of the least advantaged.

The last requirement is the most demanding and the most controversial in its application to professional admissions. One interpretation holds that the difference principle requires setting aside some proportion of places for students from disadvantaged backgrounds even if their test scores are lower than those of more advantaged students, on the grounds that the score differential reflects social advantage rather than intrinsic ability and that admitting more students from disadvantaged backgrounds serves the legal needs of the least advantaged members of society who are currently underserved by a legal profession dominated by the socially privileged. This interpretation supports affirmative action in admissions, understood not as reverse discrimination but as a mechanism for removing the distortion that social advantage introduces into ostensibly neutral measures of ability.

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A second interpretation holds that the difference principle is satisfied by ensuring that the rewards of legal qualification are not so extreme as to create gross inequalities in the society as a whole, and that the primary requirement of justice in admissions is not to prefer less-qualified candidates from disadvantaged backgrounds but to ensure that the educational system that produces qualification is designed so as to give everyone a genuine opportunity to develop the relevant qualifications. On this interpretation, the primary justice obligation runs not to the admissions process but to the educational system that precedes it: if the educational system genuinely provides equal opportunity for all children to develop the relevant abilities, then admitting on the basis of demonstrated ability is just even if it produces unequal outcomes.

The practical difference between these interpretations is significant. The first supports both targeted admissions preferences for disadvantaged students and targeted support systems for those who are admitted under such preferences; the second focuses primary attention on the reform of secondary and university education rather than the reform of admissions, and treats the current educational inequalities as a problem to be solved at source rather than compensated for at the point of professional entry. Neither interpretation is obviously correct, and the Bangladesh Law Aptitude Test design proposed in this Part draws on elements of both: it includes contextual admissions provisions that recognize and partially compensate for the effects of social disadvantage on test performance, while also arguing strongly for the educational reforms described in Part Three as the more fundamental long-term solution to educational inequality.

Section 29.3: Dworkin on Equal Treatment and Admissions

Ronald Dworkin's treatment of admissions preferences in Taking Rights Seriously, particularly his famous analysis of the Bakke case in which the American Supreme Court considered the legality of racial preferences in medical school admissions, provides a different but complementary philosophical framework. Dworkin's argument is that the right to equal treatment does not mean the right to the same treatment: it means the right to be treated as an equal, with equal concern and respect for one's interests. These two formulations generate very different conclusions about admissions preferences.

If equal treatment means the right to be treated exactly the same as every other applicant, with no account taken of social background or group membership, then any departure from a simple rank-ordering by test scores is a violation of equal treatment. This is the position of those who oppose affirmative action in any form, including preferences for students from disadvantaged backgrounds. But Dworkin argues that this interpretation misunderstands the nature of the right. The right to be treated as an equal is the right to have one's genuine interests given the same weight as anyone else's interests. An admissions system that uses test scores as the sole criterion, when those scores are systematically elevated by social advantages that have nothing to do with the intellectual abilities relevant to legal education, does not give equal weight to the interests of those whose scores have been depressed by social disadvantage. True equal treatment, on Dworkin's account, requires the kind of contextual analysis that takes account of how social circumstances affect the signals that admissions criteria are supposed to measure.

Dworkin's analysis also addresses the question of institutional purpose. The purpose of a law school, on Dworkin's account, is not simply to provide benefits to whoever scores highest on an

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aptitude test; it is to produce the best possible lawyers for the society the school serves. Producing the best lawyers for Bangladeshi society may require producing lawyers who understand the full diversity of that society, who can relate effectively to clients from all social backgrounds, who bring perspectives shaped by different experiences of the law's operation, and who are committed to serving communities that current legal professionals largely ignore. These considerations of institutional purpose support admissions practices that go beyond simple rank-ordering by test scores, not as departures from the principle of admitting the best candidates but as expressions of that principle properly understood.

Section 29.4: The Islamic Legal Tradition and Principles of Distributive Access

The Islamic legal tradition offers resources for thinking about distributive justice in professional education that are directly relevant to Bangladesh as a Muslim-majority society with a constitutional framework that draws on both secular democratic and Islamic principles. The concept of maslaha, public interest or public benefit, which was developed by classical jurists including al-Ghazali and elaborated by Ibn Taymiyya and al-Shatibi, provides a basis within Islamic jurisprudence for arguing that the organization of professional legal education must be evaluated by reference to its contribution to the welfare of the Muslim community and of society as a whole.

The maqasid al-sharia framework, which identifies the protection of life, intellect, lineage, property, and religion as the fundamental purposes of Islamic law, provides a basis for evaluating admissions practices by reference to their contribution to the protection of these fundamental goods. An admissions system that produces a legal profession capable of effectively protecting the rights and interests of all citizens, including the poorest and most vulnerable, serves the maqasid more effectively than one that produces a profession serving primarily the interests of the wealthy and well-connected. The Quranic principle of 'adl (justice) requires that social arrangements be organized so as to give each person what they are due, and what the poor and disadvantaged are due in the context of legal education access is a genuine, not merely formal, opportunity to develop and demonstrate their legal aptitude.

The tradition of ijma (consensus) and shura (consultation) in Islamic political thought supports the argument that the design of an admissions system for professional legal education should be a matter of broad social deliberation rather than a decision imposed by technical experts or political authorities without adequate public engagement. The design of the Bangladesh Law Aptitude Test should therefore be the product of an inclusive consultative process involving legal academics, practicing lawyers, judges, students, civil society organizations, representatives of disadvantaged communities, and the broader public, all brought together in a process that respects the diversity of perspectives that characterize Bangladeshi society and that produces a design with genuine public legitimacy.

CHAPTER THIRTY: A GLOBAL HISTORY OF LEGAL EDUCATION ADMISSIONS TESTING

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Section 30.1: The American Experience: The Law School Admission Test

The Law School Admission Test (LSAT), administered by the Law School Admission Council (LSAC), is the oldest and most extensively studied legal education admission test in the world. Its history, its design evolution, its psychometric performance, and the controversies it has generated collectively constitute the most important body of empirical evidence available to anyone designing a new legal education admission test, and any serious reform proposal for Bangladesh must engage with this evidence carefully.

The LSAT was first administered in 1948, initially developed by the Educational Testing Service at the request of a group of American law schools that wanted a more reliable basis for admissions decisions than the undergraduate grade point average alone. The test was designed from the beginning not as a test of legal knowledge but as a test of the reasoning skills that legal education required: the ability to read complex texts carefully, to identify the logical structure of arguments, to evaluate the validity of inferences, and to analyze problems systematically. This design decision, to measure reasoning ability rather than prior legal knowledge, was philosophically important and has been consistently vindicated by subsequent research.

The most comprehensive recent summary of the LSAT's predictive validity research, covering the period from 2021 to 2025, confirms findings that have been consistent for many decades: LSAT scores are the single best predictor of first-year law school performance, significantly better than undergraduate grade point average (UGPA) alone, and the combination of LSAT score and UGPA provides the best predictive model available. The research shows that LSAT scores alone account for approximately 59% of the predictive power in models of first-year law school grades, compared to approximately 41% for UGPA alone, and that combining both variables produces substantially stronger prediction than either alone. Critically, these findings hold across law schools of different selectivity levels and in different regions of the United States, suggesting that the test is measuring something real about the abilities needed for legal education rather than something specific to particular institutional contexts.

The LSAT underwent a significant format change in August 2024, when the analytical reasoning section (widely known as "logic games") was removed and replaced by an additional logical reasoning section. This change was the consequence of a 2017 lawsuit brought by a visually impaired test-taker who argued that the diagrammatic nature of the logic games section made it disproportionately difficult for those who could not use visual aids. Following the format change, LSAT scores increased measurably: LSAC reported a 42.2% increase in applicants applying with the highest possible scores in 2025 compared to 2024. This score inflation has generated significant debate about whether the format change has reduced the test's discriminative power and its predictive validity, with some commentators arguing that removing the most analytically demanding section of the test has made it a less accurate measure of the skills required for law school success.

The LSAT controversies most relevant to the Bangladesh context concern its differential performance across racial and socioeconomic groups. Research consistently shows that LSAT scores are correlated with socioeconomic background: students from higher-income families, students who attended better-resourced schools, and students who had access to expensive LSAT

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preparation courses tend to score higher on average than students from lower-income families and under-resourced schools. This differential is not attributable entirely to differences in the underlying abilities the test is designed to measure; it reflects in part the advantages that wealth and good schooling provide in developing test-relevant skills. The American Bar Association and individual law schools have responded to this differential in various ways, including using test scores in conjunction with contextual information about the applicant's background, offering free preparation resources, and experimenting with test-optional admissions policies.

The 2025 research from LSAC's 2021-2025 correlation study reports an important nuance: LSAT is the best predictor of first-year law school performance using the average of multiple LSAT scores, but most law schools use the highest score, which is less predictive. This institutional practice of using the highest rather than the average score was described by one 2025 commentary as "law school admissions practices looking at the LSAT like it's 2005," meaning that admissions decisions are being made on the basis of metrics whose limitations are now well-documented. For Bangladesh, this lesson is directly applicable: any national legal education admission test should specify, in its governance framework, how scores should be used by admitting institutions, and should actively discourage practices, like exclusive reliance on a single high score, that reduce the test's predictive validity.

The test-optional movement in American law school admissions, which gained momentum during the COVID-19 pandemic and has continued in some form since, raises questions about whether standardized testing is necessary at all. The experience of law schools that adopted test-optional policies suggests that they admitted more diverse student bodies but that the resulting students tended to have lower first-year law school performance on average, requiring more intensive academic support. This evidence does not conclusively show that test-optional admissions are wrong, but it does suggest that eliminating standardized testing without providing alternative mechanisms for identifying students likely to struggle in law school creates both educational and ethical problems, since admitting students to a program in which they are likely to fail is not a kindness to those students.

The general lesson from the LSAT's long history for the design of a Bangladeshi test is that a well-designed aptitude test measures something real and valuable, that it should be used as part of a holistic admissions process rather than as the sole criterion, that it should be accompanied by systematic preparation resources to reduce the advantage that expensive coaching provides, and that its use should be evaluated against regular validity studies that test whether it is predicting the right outcomes in the specific national context.

Section 30.2: The Indian Experience: The Common Law Admission Test

The Common Law Admission Test (CLAT), administered by the Consortium of National Law Universities, is the admission test most directly analogous to what Bangladesh needs and most relevant to the Bangladeshi reform context. It was first introduced in 2008, following a Memorandum of Understanding signed by seven National Law Universities in 2007, and was designed to replace the fragmented system in which each NLU conducted its own admission test. By 2026, approximately 90,000 students sit for CLAT annually, with scores used by 26 of 27

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National Law Universities and a large number of private law schools, making it one of the most significant educational admission tests in South Asia.

The CLAT design covers five sections: English language comprehension, general knowledge and current affairs, logical reasoning, legal reasoning, and quantitative techniques. The legal reasoning section is distinctive: it presents candidates with passages describing legal rules or situations and asks them to apply those rules to specific facts, testing not prior knowledge of law but the ability to reason from given legal propositions to their application in new situations. This is a particularly well-designed feature, because it directly assesses one of the most fundamental skills required in legal education, namely the ability to extract the general rule from a specific formulation and apply it correctly to novel situations, without requiring any prior legal knowledge that would disadvantage those who have not yet studied law.

The CLAT examination format was revised significantly for the 2020 examination, moving from direct-answer MCQ questions to comprehension-based questions in which all questions are derived from reading passages. This format shift was driven by a recognition that the previous format, which tested factual recall in subjects like general knowledge, was measuring a form of preparation intensity rather than genuine intellectual ability. The comprehension-based format is more resistant to coaching because it requires candidates to think through the specific content of the passage rather than recalling memorized facts. For Bangladesh, this format choice is directly instructive: a national legal education admission test that includes a significant comprehension-based component will be more resistant to the coaching industry that would inevitably develop around it and will provide a more valid measure of the reasoning abilities relevant to legal education.

The CLAT controversies most relevant to Bangladesh concern two persistent problems: geographic and socioeconomic inequality in test access and performance, and allegations of irregularities in specific examination administrations that have periodically generated litigation. On the equity dimension, research consistently shows that candidates from metropolitan areas who have had access to expensive coaching perform significantly better than candidates from smaller cities and rural areas who have not. The Consortium has responded to this with some free preparation resources and by holding the exam at multiple centers across India, but the geographic and coaching-related differentials persist. The equity challenge is inherently more severe in India than in Bangladesh because India's geographic scale is much larger, but the essential problem, that those with access to better preparation resources perform better, is identical.

On the integrity dimension, the CLAT has faced several legal challenges arising from alleged irregularities in specific examinations, including disputes about the correctness of answer keys, allegations of paper leaks, and challenges to the fairness of specific examination centers. These challenges are an inevitable feature of any high-stakes national examination, and the legal framework for managing them, including clear challenge procedures, independent review mechanisms, and transparent publication of decisions, is an essential element of any national test governance framework. The CLAT Consortium has developed increasingly sophisticated procedures for managing these challenges over the years, and Bangladesh's test governance framework should incorporate the lessons learned from CLAT's experience in this respect.

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The CLAT also offers an important lesson about the political economy of national admission testing. The introduction of CLAT was contested by institutions that wished to maintain control over their own admission processes, by coaching institutions whose businesses were disrupted by the shift to a national format, and by students who argued that the new format advantaged certain backgrounds over others. The same resistances will emerge around any Bangladesh national test, and understanding their sources and how they were managed in India is valuable preparation for the advocacy and political engagement that the Bangladesh reform will require.

Section 30.3: The British Approaches: Flexibility and the GDL Model

The British approach to legal education admissions is more decentralized than either the American or Indian systems and offers different lessons for Bangladesh. In England and Wales, entry to undergraduate law programs (LLB) is through the Universities and Colleges Admissions Service (UCAS), which coordinates applications across all universities. Individual universities set their own admissions criteria, which typically include A-level grade requirements, personal statements, and in some cases additional aptitude tests or interviews. There is no single national law school admission test equivalent to the LSAT or CLAT, though some universities use the LNAT (National Admissions Test for Law) as a supplementary assessment, particularly competitive universities like Oxford, Cambridge, Bristol, University College London, and several others.

The LNAT, introduced in 2004, is a two-part test: Part A consists of comprehension questions based on argumentative passages, designed to assess critical thinking, analysis, and reasoning; Part B is an essay question designed to assess candidates' ability to construct and express a coherent argument in writing. The LNAT is explicitly not a test of legal knowledge; like the LSAT, it assesses reasoning abilities that are prerequisites for legal education rather than knowledge that legal education is supposed to provide. The evidence on the LNAT's predictive validity is more limited than for the LSAT, partly because it is used by fewer institutions and in conjunction with more information about candidates (A-level results, personal statements), but the available evidence suggests it provides useful additional information about academic ability that is not fully captured by A-level grades alone.

The Graduate Diploma in Law (GDL), now being replaced in England and Wales by the new Solicitor Qualifying Examination (SQE) pathway, provided a one-year conversion course for non-law graduates who wished to enter legal practice, effectively a condensed treatment of the core subjects of a law degree compressed into a year of intensive study. The GDL has been controversial throughout its existence: its critics argue that a year of intensive study cannot provide the equivalent of three years of full legal education, that it produces graduates who know legal doctrine but lack the deeper conceptual understanding that comes from sustained engagement with law as an intellectual discipline, and that it is primarily used by those who wish to enter the profession quickly rather than those who have a genuine commitment to legal education as such. Its supporters argue that it demonstrates the possibility of effective legal education in a compressed timeframe, that it has been a valuable route into the profession for those who came to law later in life with valuable prior experience, and that the quality of GDL graduates varies enormously depending on the institution and the individual student's investment.

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For Bangladesh, the GDL offers a partial precedent for the kind of graduate entry program proposed in Part Three as the replacement for the abolished two-year LLB (Pass) course. But the key lesson is negative rather than positive: the GDL, at its weakest, showed exactly the problems that the Bangladesh two-year course exhibited, compression of legal education to a point where genuine understanding cannot be achieved. A Bangladeshi graduate entry program must be longer than the GDL, must be more rigorously designed, and must be offered only at institutions with genuine academic capacity.

Section 30.4: Australian and Singaporean Models

Australia's Graduate Management Admission Test (GMAT) experience and Singapore's legal education admission framework offer additional comparative perspectives. Australia's law schools use a combination of Australian Tertiary Admission Rank (ATAR) scores and, for the leading institutions, the LSAT for graduate entry programs. The Australian Graduate School of Management and several law schools have developed holistic admissions practices that combine standardized test scores with undergraduate performance, work experience, and personal interviews in ways that attempt to balance meritocratic selection with diversity objectives.

Singapore's approach to legal education admissions is particularly instructive because Singapore's legal system, like Bangladesh's, is in the common law tradition and has deliberately invested in developing a world-class legal education system as an element of its broader development strategy. The Singapore Management University School of Law and the National University of Singapore's Faculty of Law both operate rigorous selection processes that combine strong academic performance requirements with aptitude assessments and holistic review. Singapore's experience demonstrates that a small country with limited numbers of well-qualified applicants can maintain high standards of legal education quality through rigorous selection and that this quality can be achieved without sacrificing diversity through well-designed scholarship and support programs.

The general lesson from this comparative survey is that the most effective legal education admission systems combine a standardized measure of relevant ability, typically a comprehension and reasoning test rather than a knowledge test, with other measures of prior academic performance, with contextual information about applicants' social backgrounds, and with institutional support programs that enable those from disadvantaged backgrounds who are admitted to succeed in their programs. The Bangladesh Law Aptitude Test proposed in this Part is designed with all of these elements.

CHAPTER THIRTY-ONE: THE DESIGN OF THE BANGLADESH LAW APTITUDE TEST

Section 31.1: The Cognitive Architecture: What Abilities to Measure

The foundational design decision for any educational admission test is the identification of the cognitive abilities that the test should measure. This decision must be driven by two

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considerations: what abilities are relevant to success in legal education, and what abilities are genuinely assessable through a standardized testing format in a way that provides reliable information beyond what other available data sources already provide.

On the first consideration, the best evidence of what abilities matter for legal education comes from studies of what predicts success in law school and legal practice. The evidence from the LSAT correlation studies, which have been conducted consistently for more than seven decades, and from the parallel research literature on legal education outcomes, converges on several core abilities: reading comprehension of complex texts, logical reasoning including both deductive and inductive inference, analytical thinking applied to structured problems, and the ability to evaluate and construct written arguments. These are not specifically legal abilities in the sense of presupposing any prior knowledge of law; they are general cognitive abilities that legal education draws on and develops, and that therefore serve as predictors of success in legal study.

The LSAT and CLAT research both support the inclusion of a legal reasoning component that presents candidates with unfamiliar legal rules and asks them to apply those rules correctly to specific factual situations. This component tests the ability to extract the operative principle from a stated rule and apply it accurately to novel cases, which is a specifically legal reasoning ability distinct from general logical reasoning. The inclusion of such a component in the Bangladesh Law Aptitude Test is strongly recommended, both because it is directly predictive of legal education success and because it provides a distinctive signal about legal aptitude that general reasoning tests do not fully capture.

Quantitative reasoning, which is included in the CLAT and in modified form in the LSAT, is a more contested element. The evidence suggests that quantitative reasoning ability is a relatively weak predictor of legal education success compared to verbal and analytical reasoning, and that the legal subjects in which quantitative skills are most useful, including tax law, financial regulation, and quantitative aspects of evidence, are either specialist areas or are taught in ways that can be accessed without strong mathematical backgrounds. The inclusion of a quantitative component in the Bangladesh Law Aptitude Test should therefore be limited to a relatively small proportion of the total score and should focus on the ability to reason about quantities and proportions rather than on mathematical facility beyond what any educated person should possess.

On the second consideration, the available prior data that admitting institutions will have access to includes the HSC examination results of applicants, which provide a measure of prior academic performance across a range of subjects. The Bangladesh Law Aptitude Test should be designed to provide information that is not already fully captured by HSC results: not simply a repetition of what HSC examinations measure, but an additional dimension of evidence about the candidate's intellectual abilities that is specifically relevant to legal education. The research evidence from the LSAT context, showing that aptitude test scores are significantly more predictive of law school performance than prior grades alone, suggests that a well-designed aptitude test genuinely adds value over grade-based selection alone.

The cognitive architecture of the Bangladesh Law Aptitude Test is therefore proposed as follows: a reading comprehension and analytical reasoning section, a logical reasoning section, a

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legal reasoning section, and a writing section. These four sections together cover the full range of cognitive abilities that are both relevant to legal education and genuinely assessable through a standardized format. The relative weighting of these sections, and the specific question formats within each, are developed in detail in Sections 31.2 through 31.5 below.

Section 31.2: The Reading Comprehension and Analytical Reasoning Section

Reading comprehension of complex texts is the most fundamental cognitive ability required in legal education. Legal study is primarily a reading-intensive activity: cases, statutes, academic articles, parliamentary debates, regulatory materials, and international instruments are all complex written texts that must be read carefully, accurately, and with sensitivity to the specific meaning of words and phrases. The ability to read such texts accurately, to identify their main arguments, to distinguish what they say from what they imply, to recognize the assumptions they rest on, and to evaluate the quality of the reasoning they employ, is therefore directly relevant to legal aptitude.

The reading comprehension section of the Bangladesh Law Aptitude Test should consist of three to five passages of roughly 400 to 600 words each, drawn from a variety of textual types: an argumentative essay on a social or political issue, an extract from a judgment or a legal document, a passage of literary prose, and a passage of social science writing. Each passage should be followed by five to eight questions that require the candidate to demonstrate accurate understanding of the text's content, to make inferences that are genuinely supported by what the text says, to identify the main point or argument of the passage, to evaluate the strength of specific arguments within the passage, and to identify assumptions that the passage depends on. Following the format shift introduced in CLAT 2020, all questions should be comprehension-based, derived directly from the content of the passages, rather than testing general knowledge independently of the passages.

The selection of passages is one of the most important quality assurance challenges in managing a reading comprehension test. Passages should be complex enough to be genuinely discriminating, but not so technical in their subject matter that familiarity with the subject confers a significant advantage over those who happen not to have encountered it. Passages should be drawn from a diverse range of sources and should not systematically favor the reading experiences of urban, educated, or socially advantaged candidates. Careful pre-testing of passages with diverse candidate groups before their inclusion in operational examination forms is essential to identify and eliminate passages that show evidence of bias toward particular groups.

The analytical reasoning component, which was the "logic games" component of the LSAT before its removal in 2024, involves presenting candidates with a defined set of entities, rules governing their relationships, and a series of questions about the configurations that are possible or necessary given the rules. This component is particularly valuable because it tests the ability to work systematically with formal constraints, to construct valid inferences from given conditions, and to avoid invalid inferences by recognizing when conditions are insufficient to determine a unique answer. These are abilities that are genuinely relevant to legal reasoning, where constraints set by statutes and precedents must be applied systematically to determine what conclusions they permit.

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The controversy over the removal of logic games from the LSAT provides an important lesson for Bangladesh. The removal was driven by accessibility concerns relating to the diagrammatic nature of the questions, which disadvantaged visually impaired candidates. The consequence, according to analysis published in 2025, was score inflation and potentially reduced predictive validity. For Bangladesh, the design choice is to include analytical reasoning in a format that does not require visual diagramming: questions can be presented verbally, describing the entities and rules in text, and candidates can work through them analytically without needing to construct visual diagrams. This format is accessible to candidates with visual impairments while preserving the analytical challenge that makes the section a valuable predictor of legal aptitude.

Section 31.3: The Logical Reasoning Section

The logical reasoning section tests the ability to analyze and evaluate arguments: to identify the conclusion of an argument, to assess whether the stated premises support the conclusion, to identify assumptions that an argument depends on, to recognize flaws in arguments, to strengthen or weaken arguments by providing additional information, and to identify the parallel structure between two arguments. These are abilities that are central to legal reasoning: legal arguments are, at their core, sequences of inferences from given premises to conclusions, and the ability to analyze them critically, to identify their strengths and weaknesses, and to construct arguments that are logically valid and factually well-supported, is fundamental to legal competence.

The logical reasoning section should consist of twenty to twenty-five questions, each presenting a short argument followed by a question about its logical structure or strength. The questions should cover a range of argument types and question types, ensuring that candidates cannot perform well by mastering a single approach or set of templates. The arguments presented should be drawn from a wide range of subject areas, including social policy, science, economics, history, and current affairs, rather than exclusively from legal contexts, so that familiarity with legal doctrine does not advantage those who have already studied law.

The psychometric design of the logical reasoning section requires careful attention to item difficulty, discrimination, and inter-item independence. Items should be piloted on representative samples of target candidates before inclusion in operational tests, and the pilot data should be used to select items with appropriate difficulty levels and strong discriminative properties. Inter-item independence, the property that correct responses to one item do not directly enable or preclude correct responses to other items, should be preserved to ensure that the section measures a range of reasoning abilities rather than a single ability applied repeatedly.

Section 31.4: The Legal Reasoning Section

The legal reasoning section, modeled on the corresponding section of the CLAT, is the component of the Bangladesh Law Aptitude Test most distinctive to its purpose and most directly predictive of legal education success. It presents candidates with passages describing legal rules, principles, or situations and asks them to apply those rules or principles to specific factual scenarios. The key feature is that the legal rules are given within the passage itself, so prior knowledge of law is not required: what is tested is the ability to read the stated rule

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accurately, to identify the operative conditions of its application, and to reason correctly about whether those conditions are met in the specific factual scenario presented.

An illustrative example (which would require substantially more careful design for operational use) would be as follows: A passage describes a legal rule that an employer is liable for harm caused to a third party by an employee acting in the course of employment, and that an employee is acting in the course of employment when performing duties assigned by the employer or reasonably incidental to those duties. The passage then presents three or four scenarios: an employee who causes a road accident while driving to a meeting arranged by their employer; an employee who causes an accident while detoured for a personal errand during an authorized work trip; an employee who causes harm while using employer equipment during their lunch break. Candidates are asked to identify which scenarios fall within the rule, explaining their reasoning.

This format tests exactly the ability that legal education requires: the ability to parse a legal rule with precision, to distinguish the situations it covers from those it does not, and to explain the distinction by reference to the operative conditions of the rule. It is an ability that can be developed through legal education but that is clearly not identical to substantive legal knowledge: a candidate who reads carefully and reasons precisely can perform well in this section without ever having studied law.

The development of legal reasoning passages and questions is a specialized skill that requires involvement of legal educators and practicing lawyers, who can ensure that the legal scenarios presented are legally coherent, that the correct answers are genuinely determinate given the stated rules, and that the questions test reasoning rather than exploiting ambiguities in the rules that a legally trained reader would recognize but an untrained reader would not. A dedicated question development team with legal expertise is therefore essential to the quality of this section.

Section 31.5: The Writing Assessment

The writing assessment component of the Bangladesh Law Aptitude Test serves a different purpose from the multiple-choice sections: it assesses the candidate's ability to organize information, construct a coherent argument, and express complex ideas in clear and precise written English. These abilities are directly relevant to legal education, where written work, including essays, research papers, and eventually legal documents, is a central mode of assessment and professional output.

The writing assessment should consist of a short argumentative task, presenting candidates with a question on a social, legal, or political issue and asking them to write a response of approximately 300 to 400 words taking and defending a specific position. Candidates should not be asked to demonstrate prior knowledge of the specific issue but should be able to engage with it on the basis of the general education and reasoning abilities they bring to the test.

The scoring of the writing assessment requires trained human scorers rather than automated scoring, at least for the initial period of the test's operation. Automated essay scoring systems

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have been developed and deployed by several major testing organizations, including ETS and Pearson, but their validity in contexts where the candidate population is linguistically diverse and where English may be a second language for many candidates is less well-established than their validity in predominantly English-speaking contexts. Bangladesh is a context where English language proficiency varies significantly across candidates, and the writing assessment design must carefully distinguish the ability to construct a well-reasoned argument from the ability to write in grammatically perfect English, since the former is a genuine predictor of legal aptitude while the latter reflects in part the educational advantages that wealthy students with better English instruction have received.

A scoring rubric that separately rates argument quality (the clarity, coherence, and logical structure of the argument) and language quality (the grammatical correctness and vocabulary range of the writing) and that weights argument quality more heavily in the final score is one approach to managing this distinction. Candidates whose first language is Bengali and whose English is functional rather than native-like should not be systematically disadvantaged relative to candidates from more privileged educational backgrounds whose English instruction has been of higher quality, as long as they can express their reasoning clearly enough to be understood and evaluated.

Section 31.6: Overall Test Structure, Duration, and Scoring

The Bangladesh Law Aptitude Test should be a paper-based test of approximately three and a half hours, divided into the four sections described above with a short break between sections. The total number of questions should be in the range of 100 to 120 for the three multiple-choice sections, with the writing assessment taking approximately 35 to 40 minutes. Negative marking should be applied to the multiple-choice sections at a rate of one-quarter mark deducted for each incorrect answer, consistent with the CLAT format, to discourage guessing and to provide information about the confidence of candidates' responses.

Scores should be reported on a section-by-section basis as well as in aggregate, allowing admitting institutions to identify candidates whose profile of abilities is particularly relevant to their specific programs. A law school that places particular emphasis on advocacy skills, for example, might weight the writing assessment more heavily in its own admissions decisions; one that emphasizes academic research might weight the reading comprehension section more heavily. The disaggregated reporting of section scores therefore supports the diversity of approaches across different institutions while the national standardization of the test itself ensures that candidates are measured against the same scale regardless of which institution they are applying to.

The score scale should be designed to maximize the test's discriminative power across the full range of candidate performance, not merely at the level of qualified vs. not-qualified. A test that does not discriminate well among the most highly qualified candidates, which is a risk if the test is too easy at the top of the scale, would fail to help institutions that are selecting among many strong candidates. A test that does not discriminate well among candidates at the lower end of the scale would fail to identify those candidates who are genuinely underprepared for legal education and who are at risk of failure if admitted. The test design should therefore include

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items spanning a full range of difficulty levels, with both items accessible to most prepared candidates and items sufficiently challenging to discriminate among the strongest candidates.

Section 31.7: Administration, Security, and Technology

The Bangladesh Law Aptitude Test must be administered under conditions that ensure the integrity of the examination process: that each candidate's score reflects their own performance rather than any form of cheating, advance access to examination materials, or proxy examination-taking. The experience of the Bangladesh public examination system with cheating scandals, and the experience of the Bar Council enrollment examination with integrity challenges, makes clear that the governance of examination security cannot be taken for granted but must be designed with great care.

The security framework for the BLAT should include the following elements. First, paper-based examination materials should be printed and distributed through a fully tracked chain of custody, with every examination booklet accounted for from printing through distribution to collection and return. Second, examination centers should be selected and monitored for compliance with prescribed protocols, with trained invigilators who are not employed by the institutions whose candidates they are supervising. Third, biometric identification of candidates at examination centers should be implemented, using facial recognition or fingerprint verification, to prevent proxy examination-taking. Fourth, examination papers should exist in multiple parallel forms that are equivalent in difficulty but contain different questions, so that candidates seated adjacent to each other at examination centers cannot copy from each other. Fifth, there should be a clear and publicly announced process for reporting suspected irregularities, investigating credible reports, and taking appropriate action where irregularities are confirmed.

The question of whether the examination should be administered in a paper-based or computer-based format is a significant one. Computer-based testing offers several advantages: the possibility of immediate score reporting rather than the weeks-long delay associated with paper-based testing, the flexibility to administer the test on multiple dates rather than a single national test day, and the resistance to certain forms of cheating that are easier with paper-based tests. However, computer-based testing also creates significant equity concerns in the Bangladeshi context: access to computers and the familiarity with computer-based examination formats that enables candidates to perform at their best is strongly correlated with wealth and urban location, meaning that a move to computer-based testing would disadvantage rural and low-income candidates. For the initial implementation of the BLAT, a paper-based format with multiple parallel examination forms is recommended, with a phased transition to a hybrid paper-and-computer format over a period of five to seven years as computer access becomes more widespread across the country.

CHAPTER THIRTY-TWO: EQUITY AND ACCESS IN THE BANGLADESH LAW APTITUDE TEST

Section 32.1: Understanding the Sources of Test Score Differentials

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Any standardized admission test introduced into a society as economically and educationally unequal as Bangladesh will produce score distributions that reflect, to some degree, the inequality of educational opportunity rather than purely the inequality of underlying intellectual ability. This is not a reason to abandon standardized testing; the available alternatives, selection based solely on prior examination grades or on institution-specific processes conducted without any standardized element, have even stronger correlations with social advantage. But it is a reason to design the test, and the admissions processes that use it, with explicit attention to the equity implications of the score distributions it produces.

The sources of test score differentials between socioeconomic groups can be categorized as follows. Preparation effects occur when students who have received better secondary education, or who have had access to expensive preparation courses, have developed the reading, reasoning, and writing skills measured by the test to a higher level than they would have without those advantages. These preparation effects reflect real differences in developed ability, even if those differences are attributable to social circumstances rather than to inherent intellectual capacity. A test designed to minimize preparation effects would focus on abilities that are hard to develop through short-term coaching, which is precisely the rationale for the comprehension-based format of the BLAT proposed in this Part: coaching can improve test-taking technique and familiarity with the format, but genuine improvements in reading comprehension and logical reasoning ability require sustained engagement with complex texts and argument over a period of years, not the weeks or months of an intensive preparation course.

Language effects operate when the test is conducted in a language, particularly English, that is not the first language of many candidates and in which candidates' proficiency varies with the quality of their prior education. In Bangladesh, English language proficiency is strongly correlated with urban location and socioeconomic status: graduates of elite private secondary schools in Dhaka typically have much stronger English than graduates of rural government schools, not because of inherent linguistic ability but because of differences in the quality and duration of English instruction they have received. A test conducted entirely in English will therefore reflect these language differences, which may or may not be relevant to legal aptitude depending on how much of legal education and legal practice is conducted in English.

Content familiarity effects occur when the specific topics or references used in test questions are more familiar to candidates from certain cultural or social backgrounds than to others. A reading comprehension passage about parliamentary procedure will be more accessible to candidates who have been following political news in English than to those who have not; a logical reasoning problem that uses examples from business or finance will be more accessible to candidates whose families are engaged in business or finance than to those from agricultural or working-class backgrounds. Careful attention to the cultural universality of test content, and systematic pre-testing of items with diverse candidate groups to identify and eliminate content that shows evidence of group-differential performance attributable to familiarity effects rather than reasoning ability, is an essential element of equitable test design.

Stereotype threat effects, documented in a substantial experimental literature in social psychology originating with the work of Claude Steele and Joshua Aronson in the 1990s, occur when members of groups that are negatively stereotyped in academic contexts perform less well

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on tests taken in conditions that activate awareness of the stereotype. Research shows that Black students in the United States, and students from other stigmatized groups in various national contexts, perform less well when the evaluation context makes their group membership salient. The implications for Bangladesh are not fully clear, since the relevant stereotypes will differ from the American context, but it is plausible that students from disadvantaged rural backgrounds who may have internalized negative stereotypes about their own academic ability relative to urban elites may experience something analogous to stereotype threat when sitting a high-stakes national examination. The administration protocols of the BLAT should be designed to minimize the salience of group membership and to communicate clearly to all candidates that the test is measuring their potential rather than their background.

Section 32.2: Contextual Admissions: Principles and Design

The concept of contextual admissions, which has been developed most thoroughly in the United Kingdom's efforts to expand access to selective universities, refers to the practice of taking into account information about an applicant's educational and social background when interpreting their measured performance on admission criteria. The core argument for contextual admissions is that the same test score achieved by a student from a disadvantaged background represents greater underlying ability than the same score achieved by a student from a privileged background, because the disadvantaged student has achieved the score without the educational advantages that the privileged student has received. A system that treats identical scores from these two candidates as representing identical potential is therefore not genuinely measuring potential but is partly measuring the advantages of prior educational provision.

Contextual admissions require a reliable and publicly available measure of educational disadvantage, so that the context in which a candidate's scores were achieved can be objectively characterized. In Bangladesh, the most readily available proxies for educational disadvantage are the type of secondary school attended (government versus private, urban versus rural), the geographic location of the school, and the performance of the school in the HSC examination relative to the national average. A student who achieves a BLAT score of X at a rural government school where the average HSC result is considerably below the national average has, by any reasonable interpretation, demonstrated greater relevant intellectual ability than a student who achieves the same score at an elite private school in Dhaka where the average HSC result is well above the national average.

A contextual admissions framework for Bangladesh should therefore specify: first, the measures that will be used to characterize the educational context of each candidate; second, how contextual information will be incorporated into admissions decisions, whether through score adjustments, through separate consideration of contextual candidates against contextually-defined benchmarks, or through a holistic review process in which contextual information is one factor among several; and third, how the framework will be monitored to assess whether it is achieving its intended equity objectives without undermining the predictive validity of the selection process.

The most transparent and easily administered approach to contextual admissions is the score adjustment approach, in which candidates from defined disadvantaged backgrounds receive a

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specified number of additional points on their BLAT score for the purpose of comparing their applications with those of non-contextual candidates. This approach has the virtue of transparency and consistency, but it also has the significant disadvantage that any specific adjustment is necessarily somewhat arbitrary: there is no scientific basis for determining that a student from a rural school should receive an adjustment of, say, five points rather than four or six, and the specific number chosen has significant implications for the composition of the admitted cohort. An alternative approach that avoids the need to specify arbitrary adjustment magnitudes is the proportional band approach, in which a defined proportion of places at each institution is allocated to candidates from disadvantaged backgrounds based on their ranked performance within that contextual group, rather than against the full candidate pool.

The proportional band approach is recommended for the Bangladesh context. Under this approach, each accredited law program would be required to allocate at least 30% of its first-year places to candidates from defined disadvantaged backgrounds, selected from among the highest-scoring candidates in the BLAT within that group. This ensures a meaningful representation of candidates from disadvantaged backgrounds without requiring a specific score adjustment that may be challenged as arbitrary. The 30% threshold is designed to ensure that the selected candidates are a large enough cohort to form a genuine community within the law program, since research consistently shows that isolated members of minority groups in educational settings face greater challenges than those who are part of a larger group.

Section 32.3: The Preparation Support Framework

Contextual admissions provisions address inequity at the point of selection. But the deeper equity intervention is the development of a preparation support framework that enables candidates from disadvantaged backgrounds to develop the relevant aptitude more fully before taking the BLAT, so that the score differential between advantaged and disadvantaged candidates is itself reduced rather than merely compensated for at the point of selection.

A preparation support framework for the BLAT should include several elements. First, freely available preparation materials, including practice tests with answer explanations, reading comprehension passages with worked examples of analytical approaches, and logical reasoning exercises with full explanations of the reasoning involved, should be published on the administering body's website and distributed in print form to secondary schools and public libraries across the country. These materials should be designed by professional assessment developers, not commercial test preparation companies, and should be available in both English and Bengali to maximize their accessibility.

Second, a network of BLAT preparation programs should be established at schools across the country, particularly in rural and disadvantaged areas, operated by trained educators and supported by the administering body. These programs should begin preparing students for the BLAT at least two years before the examination, because the reading, reasoning, and writing skills the test measures develop over a period of sustained engagement with demanding intellectual material, not through a short-term crash course. The programs should focus on genuine intellectual development: encouraging extensive reading, systematic engagement with complex texts, and practice of analytical and argumentative reasoning, rather than the kind of

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drill-and-practice approach to test preparation that improves test scores without improving the underlying abilities the test is designed to measure.

Third, targeted summer programs for highly able students from disadvantaged backgrounds should be developed, providing intensive intellectual engagement in the year or two before the BLAT. These programs, modeled on successful programs in other countries like the UK's Sutton Trust summer schools or the US's POSSE program, would provide students with early exposure to the kind of analytical and intellectual work that legal education requires, help them develop test-relevant skills, and build their confidence and sense of themselves as capable of succeeding in elite professional education. The programs should also provide mentorship from students and graduates of law programs who come from similar backgrounds, addressing the sense of alienation from professional education that disadvantaged students often experience.

Section 32.4: Special Provisions for Particular Groups

Beyond the general equity framework described in Sections 32.1 to 32.3, the Bangladesh Law Aptitude Test should include specific provisions for particular groups whose circumstances require targeted accommodation. These groups include candidates with disabilities, candidates whose performance on the test day was affected by documented medical or personal circumstances, candidates from the Chittagong Hill Tracts and other regions with distinct cultural and linguistic contexts, and candidates who completed their secondary education through the Bengali-medium or madrasa streams rather than the English-medium stream.

Candidates with disabilities are entitled to reasonable accommodations that enable them to demonstrate their abilities without being disadvantaged by the mechanics of the test format. Standard accommodations include additional testing time (typically 50% additional time for candidates with specific learning difficulties or physical disabilities that affect test-taking speed), the provision of large-print or Braille versions of the test materials for candidates with visual impairments, the availability of a scribe for candidates who are unable to write, and the provision of separate examination rooms for candidates whose disability requires conditions different from those available in the standard examination hall. The test should be designed from the outset with accessibility in mind, so that accommodations are adjustments to a fundamentally accessible test rather than retrofitted modifications to a test designed without accessibility considerations.

Candidates from the Chittagong Hill Tracts and other regions where minority languages are spoken alongside or instead of Bengali, and where the educational context differs significantly from the mainstream Bangladeshi educational system, present a distinct equity challenge. The CHT has been the subject of special constitutional provisions since the Chittagong Hill Tracts Accord of 1997, and any national admission test must engage seriously with the specific circumstances of these communities. The preparation support framework described above should include specific programming for CHT communities, and the contextual admissions framework should include CHT origin as one of the defined categories of disadvantage for which the proportional band approach applies.

The madrasa education stream produces a significant number of graduates each year, some of whom have genuine intellectual ability and a legitimate aspiration to enter the legal profession.

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The traditional madrasa curriculum, however, does not emphasize the kinds of reading, reasoning, and writing in English or even secular Bengali that the BLAT assesses. Madrasa graduates who wish to pursue legal education face a double challenge: they need both to demonstrate that they have the intellectual potential that the BLAT is designed to identify, and to develop the specific competencies that legal education requires. The equity provisions for madrasa graduates should include both a specific contextual band in the admissions framework and a dedicated preparation support program that addresses their specific starting position.

Section 32.5: Monitoring, Research, and the Equity Audit

The equity provisions described in the foregoing Sections are not a once-and-done design feature but an ongoing commitment that requires systematic monitoring and adjustment. The administering body of the BLAT should be required to publish annual equity reports that provide, at minimum, the following information: the distribution of BLAT scores broken down by region, school type, gender, socioeconomic background, educational stream, and any other relevant demographic characteristic for which data can be collected without compromising candidate privacy; the proportion of candidates from each demographic group who met the threshold for consideration at each tier of institutions; the proportion of places at law programs filled by candidates from disadvantaged backgrounds through the contextual admissions framework; and the subsequent academic performance of students admitted through contextual provisions compared to those admitted through standard processes.

This last element, the tracking of subsequent academic performance, is particularly important and particularly demanding. The equity case for contextual admissions rests on the premise that candidates from disadvantaged backgrounds who are admitted with lower scores than standard-track candidates have greater underlying ability than their scores alone indicate, and that they will therefore perform well in law programs when given the opportunity. If this premise is correct, contextually admitted students should perform comparably to standard-track students after a period of academic adjustment. If it is incorrect, contextually admitted students may struggle significantly, and the equity provisions may be causing harm to the very students they are designed to benefit by admitting them to programs in which they are not equipped to succeed. Longitudinal tracking of student outcomes, including first-year academic performance, completion rates, final degree results, Bar Council examination pass rates, and subsequent employment, is essential to assessing whether the contextual admissions framework is achieving its intended objectives.

The equity audit should be conducted by an independent research body, not by the administering body itself, to ensure that the audit is genuinely critical rather than self-congratulatory. The findings of the annual equity audit should be published and laid before Parliament, ensuring that there is public accountability for the equity performance of the test and the admissions framework it supports.

CHAPTER THIRTY-THREE: THE GOVERNANCE OF THE TEST ADMINISTRATION BODY

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Section 33.1: The Statutory Framework

The Bangladesh Law Aptitude Test cannot be a creation of the Bar Council, the University Grants Commission, or any individual university. Its national reach, its high-stakes character, and its role as a fundamental mechanism for regulating access to legal education all require a governance structure that is both independent of the institutional interests that could otherwise distort its operation and accountable to the public interest that its operation is supposed to serve. The only governance framework that can provide both independence and accountability is a statutory framework: the administering body should be established by an Act of Parliament, with a clearly defined statutory mandate, specified governance arrangements, prescribed powers, and explicit accountability mechanisms.

The legislation establishing the Bangladesh Law Aptitude Test Board (BLATB) should specify the following with precision. First, the mandate of the Board: to develop, administer, score, and periodically review a nationally standardized aptitude test for admission to accredited law programs in Bangladesh, in a manner that is valid, reliable, equitable, and accessible to all qualified candidates regardless of background. Second, the composition of the Board: a Board of Governors of thirteen members, including the Chair appointed by the President of Bangladesh on the advice of the Prime Minister, four representatives of the legal academy appointed by the University Grants Commission, two representatives of the practicing bar appointed by the Bar Council, one representative of the judiciary appointed by the Chief Justice, three lay members representing the public interest appointed by a Parliamentary Committee on Education and Justice, and two student representatives elected by a body representing law students across Bangladesh. Third, the term of office: five years, renewable once, with staggered terms to ensure continuity. Fourth, the independence provisions: Board members cannot be dismissed except for incapacity or gross misconduct, as determined by a specified independent process; the Board's decisions on test design, scoring, and score reporting are not subject to political override; and the Board's financial accounts are audited by the Comptroller and Auditor General of Bangladesh and published annually.

The staffing of the BLATB should be provided by a professional secretariat led by a Director-General who is a person of established expertise in educational assessment, psychometrics, or legal education, appointed by the Board through a competitive and transparent process. The secretariat should include professional test developers, psychometricians, statistical analysts, IT specialists responsible for registration and score reporting systems, equity specialists responsible for the preparation support framework and the equity monitoring program, and administrative staff. The secretariat should be of sufficient size to perform its functions with genuine professional quality, without being so large as to become bureaucratically unwieldy.

Section 33.2: The Question Development Process

The quality of the Bangladesh Law Aptitude Test will ultimately depend on the quality of the questions it contains, and the quality of the questions will depend on the quality of the process through which they are developed, reviewed, piloted, and selected for operational use. The question development process must therefore be designed with great care and must be protected

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from the pressures, including political pressure, commercial pressure, and the institutional interests of individual law schools, that could otherwise compromise its integrity.

The BLATB should maintain a permanent Question Development Committee, appointed by the Board, consisting of legal educators, experienced test developers, and cognitive scientists. The Committee should be responsible for commissioning and reviewing new questions, piloting questions with representative candidate samples, analyzing pilot data to select questions with appropriate psychometric properties, reviewing questions for potential bias toward particular demographic groups, maintaining the question bank from which operational test forms are assembled, and reviewing the overall test design on a periodic basis in light of evidence about its validity and equity.

Question development for the BLAT should follow the established best practices of the psychometric testing industry. New questions should be drafted by trained question writers, including legal educators who are specifically trained in the principles of aptitude test question design, which is a distinct skill from writing examination questions for academic assessment. Drafted questions should be reviewed by the Question Development Committee for content accuracy, logical correctness, appropriate difficulty, and potential bias. Questions that survive committee review should be piloted, either as unscored items embedded within operational test forms or through separate pilot administrations with volunteer candidate samples, and the pilot data should be analyzed to assess item difficulty, discrimination, and differential item functioning across demographic groups. Only questions that perform acceptably on all three psychometric criteria should be selected for operational use.

The security of the question bank is one of the most critical governance challenges for the BLATB. A bank of carefully developed, piloted, and calibrated questions is a valuable national asset, and its compromise through leakage would require expensive and time-consuming replacement, as well as damaging the public's confidence in the test's integrity. The BLATB should implement physical, electronic, and procedural security measures to protect the question bank, including restricted access for authorized personnel only, encrypted digital storage, and criminal liability for unauthorized disclosure.

Section 33.3: Score Reporting and the Relationship with Admitting Institutions

The relationship between the BLATB and the law programs that use BLAT scores in their admissions decisions is one of the most sensitive governance questions in the design of the national test system. The BLATB must provide BLAT scores to admitting institutions in a form that is useful for admissions decisions while protecting the privacy of individual candidates and ensuring that scores are not used in ways that undermine the test's intended function.

Score reports provided to admitting institutions should include the candidate's BLAT total score, their section scores, and a contextual indicator that describes the type of secondary school the candidate attended and its relative performance, enabling admitting institutions to apply contextual considerations in their own processes. The reports should not include information that could be used to identify candidates' ethnicity, religion, or other personal characteristics that are

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not relevant to legal aptitude, because including such information would create the conditions for discrimination, whether intentional or unintentional, in the admissions process.

The BLATB should publish guidelines for admitting institutions on the appropriate use of BLAT scores, explicitly addressing the limitations of the scores and the conditions under which they should and should not be used. These guidelines should make clear that BLAT scores should be used as part of a holistic admissions process that includes HSC results, any institution-specific assessments, and contextual information, not as the sole or dominant criterion. The BLATB should require admitting institutions to report annually on how they have used BLAT scores in their admissions processes and should publish a summary of these reports, enabling comparison between institutions and public scrutiny of admissions practices.

Section 33.4: Research, Validity, and Continuous Improvement

The BLATB should be explicitly mandated by its founding statute to commission and publish research on the validity, reliability, and equity of the BLAT. This mandate is essential because the test must be continuously evaluated against the evidence of its actual performance, not assumed to be valid and equitable because it was well-designed at its inception. Assessment science has advanced significantly in recent decades, and the methods available for evaluating test validity, for analyzing differential item functioning, and for studying the relationship between test performance and subsequent outcomes have become much more powerful. The BLATB should use the best available assessment science to evaluate its test continuously and should update the test design when the evidence indicates that improvement is possible.

The most important component of the validity research program is the predictive validity study, which tracks the academic performance of students admitted to law programs using BLAT scores and assesses the correlation between those scores and subsequent academic performance. Following the model of the LSAT Correlation Studies, the BLATB should commission predictive validity studies annually, using data from law programs on the first-year academic performance of their admitted students. The results of these studies, disaggregated by institution type, demographic group, and contextual admission status, should be published and should inform decisions about the test's design and the equity framework governing its use.

Construct validity research, which examines whether the BLAT is measuring the abilities it claims to measure, should include surveys of legal educators about the skills they find most important in their students, analyses of the relationship between BLAT section scores and performance on specific types of legal education assessments, and cognitive interviews with candidates about how they approach BLAT questions. These studies should be conducted by independent researchers appointed by the BLATB through a competitive process, not by the BLATB's internal staff, to ensure that the validity research is genuinely critical rather than self-affirming.

CHAPTER THIRTY-FOUR: HISTORICAL AND POLITICAL ANALYSIS OF THE ADMISSIONS REFORM

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Section 34.1: The Political History of Selection in Bangladeshi Education

Understanding the political history of selection in Bangladeshi higher education is essential for understanding the resistances that the proposed national LLB admission test will face and for designing a reform strategy capable of overcoming them. Selection into higher education has been a politically contested site in Bangladesh since independence, with competing interests, ideological commitments, and distributional stakes consistently making the design of admissions systems a matter of political controversy.

The university admission system in Bangladesh has been marked by periodic scandals involving cheating, question paper leaks, and allegations of favoritism in the examination process. The introduction of centralized admission tests for medical colleges through the Bangladesh Medical and Dental Council system, and the ongoing debates about whether engineering colleges should adopt a similar centralized system, provide relevant precedents for the political dynamics of centralization in education admissions. Both the medical admission system and the debates around engineering admissions reveal a consistent pattern: the institutions that have historically benefited from controlling their own admissions processes resist centralization on grounds of autonomy and quality, while reformers argue that decentralized admissions are more susceptible to corruption and more favorable to well-resourced candidates.

The bar council enrollment examination has itself been a politically contested institution, as Part Two of this commentary analyzed in detail. The examination is controlled by the Bar Council's enrollment committee, which is appointed through a process that combines judicial nomination with professional election, and it has been subject to persistent allegations of irregularity in the viva voce process. The introduction of a national law school admission test would not eliminate the enrollment examination (whose purpose is different, being to assess professional competence at the point of entry into practice rather than intellectual aptitude at the point of entry into legal education), but it would shift some of the regulatory gatekeeping from the Bar Council to the independent BLATB, which is a politically significant rebalancing of power that the Bar Council may resist.

The private university sector's resistance to a national admission test is another significant political challenge. Private universities that currently control their own admissions processes would lose that control if their admissions were governed by national test scores, and some of the most commercially oriented private universities benefit from admissions processes that effectively admit all applicants who can pay the fees, regardless of their academic preparation. The introduction of a national test with genuine content and a real bar for admission would threaten the enrollment levels of these institutions and, therefore, their financial viability. This is a genuine political and economic challenge that the reform strategy must address.

Section 34.2: The Political Sociology of Bar Council Resistance

The Bar Council as an institution has both principled and interest-based reasons to be cautious about a national legal education admission test. The principled reasons include a genuine concern about the equity implications of standardized testing in a context of educational inequality, a concern about whether a test designed externally to the Bar Council will adequately reflect the

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profession's understanding of what legal aptitude requires, and a concern about whether the governance of the test administration body will be sufficiently independent of government influence to protect the profession's interests.

The interest-based reasons are more complex and more politically sensitive. The Bar Council's enrollment examination currently serves as the primary quality gate for entry to the legal profession. If a national admission test were introduced and were sufficiently rigorous to significantly reduce the number of inadequately prepared candidates entering law programs, the pool of candidates sitting for the enrollment examination would shrink. This could be interpreted as a threat to the Bar Council's revenue from examination fees and to the prominence of its regulatory role. The Bar Council might also be concerned that a better-educated cohort entering the profession would be more assertive about professional quality standards and more critical of the current conduct of Bar Council affairs, which could be threatening to established practitioners who benefit from current arrangements.

Managing this political economy requires a strategy that addresses the Bar Council's legitimate concerns while not allowing its interest-based resistance to block a reform that is clearly in the public interest. Part of this strategy involves demonstrating, through the design of the BLATB and the design of the BLAT itself, that the Bar Council's legitimate concerns about governance independence and professional relevance have been taken seriously. Part of it involves building a coalition of reform-minded lawyers, legal academics, judicial officers, and civil society organizations who can advocate for the reform against the resistance of established interests. And part of it involves designing the transition framework so that the costs of the reform to established interests are minimized and the benefits are made as visible and tangible as possible.

Section 34.3: The Reform Window and its Political Management

The period of 2024 to 2026 represents an unusually favorable political moment for fundamental reform of the legal education admissions system. The July Uprising of 2024, the reform agenda of the Yunus interim government, the constitutional reforms approved in the February 2026 referendum, and the ongoing work of the Judiciary Reform Commission have all created a political climate in which fundamental institutional change is not only possible but actively demanded by important constituencies. The reform of legal education admissions is part of this broader reform agenda and should be presented as such, not as a narrow technical change to examination administration but as an element of the democratic renewal of the justice system.

The reform should be presented to the public and to political actors as serving three overarching values that the reform moment has made salient: meritocracy, in the sense of ensuring that entry to the legal profession is based on genuine ability rather than social connection or money; equity, in the sense of ensuring that all citizens, regardless of social background, have a genuine opportunity to enter the legal profession; and quality, in the sense of ensuring that the legal profession maintains the standards of intellectual competence and ethical seriousness that a democratic rule-of-law state requires of its lawyers. Each of these values resonates with different constituencies, and together they make the case for the BLAT one that can attract broad support across the political spectrum.

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CHAPTER THIRTY-FIVE: THE JURISPRUDENTIAL DIMENSIONS OF ADMISSION TESTING

Section 35.1: Law as a Learned Profession: Historical and Philosophical Perspectives

The concept of law as a learned profession, as distinct from a trade or a commercial service, has deep roots in the intellectual history of the common law tradition and carries direct implications for how entry to the profession ought to be regulated. The concept of the learned profession originated in the medieval university's distinction between the mechanical arts, which involved the application of practical skills, and the liberal arts, which involved the cultivation of reason and the pursuit of knowledge for its own sake. Law, medicine, and theology were the three great learned professions of the medieval university, distinguished from other occupations by their basis in a body of academic learning that had to be mastered through formal study and that gave their practitioners a form of intellectual authority distinct from both manual skill and commercial enterprise.

The implication of this conception of law as a learned profession for admissions to legal education is that the relevant criterion for entry is intellectual capacity and the disposition for sustained academic engagement, not merely prior knowledge or practical experience. This is precisely the rationale for aptitude-based admissions testing as opposed to knowledge-based testing: an aptitude test designed to measure reading, reasoning, and analytical abilities is a test of the intellectual capacities that the learned profession conception identifies as the relevant entry qualification, while a knowledge test designed to measure what candidates already know about law before they have studied it is a test of something irrelevant to the learned profession conception.

The learned profession concept is also relevant to the social dimensions of admission. If law is genuinely a learned profession rather than a hereditary guild or a commercial franchise, then admission to it must be genuinely open to all those who possess the relevant intellectual capacities, regardless of their social background. The historical reality of legal education in Bangladesh, which has consistently produced a profession dominated by urban, educated, and economically comfortable graduates, represents a failure of the learned profession ideal as much as it represents a failure of equity: a profession genuinely committed to its own intellectual character would seek out intellectual talent wherever it exists, including in disadvantaged rural communities, rather than effectively limiting access to those whose social circumstances have made the development of their intellectual capacities easier.

Section 35.2: The Professionalism Discourse and Its Implications for Selection

The contemporary academic literature on legal professionalism, which has developed significantly since the publication of Anthony Kronman's influential 1993 book The Lost Lawyer and the subsequent response literature, provides another jurisprudential dimension for thinking about legal education admissions. Kronman's argument, which has been contested but remains influential, is that the legal profession has lost its sense of professional identity as one committed

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to the cultivation of practical wisdom, to the long-term relationships of trust that sustain a genuine professional culture, and to the public service dimensions of legal work. On Kronman's account, the commercialization of legal practice and the restructuring of legal education around narrow technical training rather than the cultivation of judgment and wisdom, have produced a profession that is technically capable but professionally impoverished.

The relevance of the professionalism discourse to admissions is that it suggests that the selection of law students should attend not only to intellectual aptitude in the narrow sense of reasoning ability, but also to the qualities of character, commitment, and orientation toward public service that professional practice requires. An admission process that selects exclusively on the basis of standardized test scores captures only the intellectual dimension of professional suitability and may systematically neglect character-based dimensions that are equally important for professional quality. This is the argument for including non-test elements in legal education admissions: personal statements, references, interviews, and other holistic components that provide information about candidates' motivations, values, and character that a standardized test cannot reveal.

The Bangladesh Law Aptitude Test is proposed as one element of a holistic admissions process, not as the sole criterion for admission. The BLAT should establish a threshold below which candidates are not considered for admission at any accredited law program, but above that threshold, institutions should have discretion to use additional criteria including those described in this Section. The design of those additional criteria is a matter for individual institutions, within a framework of published and audited guidelines developed by the BLATB in consultation with the legal academy and the profession.

Section 35.3: Critical Legal Studies and the Admissions Test as Ideological Instrument

The Critical Legal Studies tradition, introduced in Part Three, raises important questions about the ideology embedded in the design and use of standardized admission tests. The CLS critique of legal institutions generally is that they systematically serve the interests of the powerful while appearing neutral and objective; the application of this critique to admissions testing is that tests designed by members of the established professional class to measure the intellectual abilities the established professional class values will tend to select candidates who are most similar to the established class, not because those candidates are intellectually superior in any objective sense but because the test encodes the intellectual values and cultural frameworks of the class that designed it.

This critique has genuine force, and it deserves to be taken seriously rather than dismissed as ideological special pleading. The question it raises is whether a genuinely objective measure of legal aptitude is achievable, or whether any aptitude test will inevitably reflect the cultural biases of those who design it. The assessment science literature provides a partial response: techniques of differential item functioning analysis, cognitive interview research, and systematic piloting with diverse candidate groups can identify and eliminate test items that perform differently across demographic groups for reasons unrelated to the abilities being measured. These techniques do not eliminate all cultural bias, but they reduce it significantly compared to a test designed without systematic attention to bias.

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The more fundamental response to the CLS critique is that the alternative to standardized testing, which is informal selection based on the judgments of admission officers, interviews, references, and the cultural signals of the application, is even more susceptible to ideological bias and cultural discrimination than a well-designed test. Research on the psychology of professional selection consistently shows that informal judgment is heavily influenced by implicit bias, by cultural similarity preferences, and by the social capital signals that privileged applicants can project more effectively than disadvantaged ones. A well-designed, systematically validated standardized test is not a perfect instrument, but it is considerably better than the alternative in providing selection information that is at least potentially culture-fair and that is resistant to the subjective biases that would otherwise dominate the selection process.

The right response to the CLS critique is therefore not to abandon standardized testing but to design it as rigorously as possible to minimize cultural bias, to ensure that the governance of the testing body is diverse and representative of the full range of stakeholders in legal education, to require systematic bias monitoring and correction, and to complement the test with the equity provisions described in Chapter Thirty-Two. This is exactly the approach proposed in this Part.

CHAPTER THIRTY-SIX: THE CONTROVERSY OVER COACHING AND COMMERCIAL TEST PREPARATION

Section 36.1: The Coaching Industry: Economic Interests and Educational Consequences

The introduction of any high-stakes national examination in Bangladesh will inevitably generate a commercial coaching industry designed to help candidates improve their scores. This is not a hypothetical concern; it is a certainty based on the experience of every country that has introduced high-stakes admission tests, including India's experience with CLAT coaching. The question is not whether a coaching industry will develop but how it should be managed, what its effects on the validity and equity of the test will be, and what institutional responses are appropriate.

The coaching industry creates equity concerns of the most direct kind: if expensive coaching significantly improves test scores, then the test becomes in part a measure of ability to afford coaching rather than ability to succeed in legal education. This concern is real but somewhat mitigated by the research evidence on the effects of coaching on LSAT and CLAT scores. That evidence consistently shows that intensive coaching produces relatively modest score improvements, typically in the range of two to five points on the LSAT scale, compared to natural score variability of fifteen or more points, precisely because the abilities the tests measure develop slowly through sustained intellectual engagement rather than rapidly through short-term intensive preparation. The comprehension-based format proposed for the BLAT is specifically designed to maximize this coaching resistance, since comprehension and reasoning abilities that have developed over years cannot be substantially replicated by weeks of coaching.

The appropriate institutional response to the coaching industry is not to ban it, which would be both legally problematic and practically impossible, but to reduce its significance relative to

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freely available preparation resources by ensuring that those resources are genuinely high quality and widely accessible. The BLATB should invest significantly in the development of free preparation materials, including full-length practice tests, worked examples for each question type, and study guides for developing the relevant reading and reasoning skills, and should make these materials available through both digital and physical channels to maximize their reach to candidates without internet access. If free preparation materials are perceived to be as good as, or nearly as good as, commercial coaching, the commercial coaching industry's ability to translate wealth into score advantage will be reduced.

The BLATB should also require commercial coaching providers to register with the Board and to comply with a code of practice that prohibits the use of actual BLAT questions obtained through any means other than the official practice materials, prohibits the making of false claims about coaching efficacy, and requires the publication of evidence-based information about typical score improvements attributable to coaching. This code of practice would not eliminate the coaching industry but would reduce its most harmful practices.

Section 36.2: The Alliance of Bar Council Examination Coaching and Structural Resistance

The existing coaching industry around the Bar Council enrollment examination is a significant structural force that has an interest in maintaining the current admissions arrangement and resisting the introduction of a national law school admission test. Many coaching centers that currently prepare candidates for the enrollment examination would need to develop entirely new curricula to prepare candidates for the BLAT, and many would not survive the transition. Their opposition to the reform will be expressed not as naked self-interest but in the language of principle: that standardized testing is inequitable, that the existing system works adequately, that the reform is premature, and so on. Understanding that these principled arguments are advanced by actors with significant financial interests in opposing the reform is necessary for evaluating them at their proper weight.

The alliance between examination coaching interests and Bar Council interests is particularly relevant to understanding the political dynamics of the enrollment examination reform discussed in Part Two. The enrollment examination coaching industry provides income to a significant number of practicing lawyers who serve as coaches, and the Bar Council's enrollment examination provides a steady stream of revenue and an institutional prominence that the Bar Council's leadership has an interest in maintaining. Both of these interests align against reforms that would improve the quality of candidates entering legal education (reducing the volume of enrollment examination candidates) or that would transfer gatekeeping authority from the Bar Council to an independent body.

Managing this alliance of interests requires the reform coalition to include representatives of the coaching industry who are prepared to adapt their business model to the new system, to demonstrate early and clearly that the BLAT will itself generate a coaching industry that provides employment for those willing to develop the relevant expertise, and to engage the Bar Council on the reform agenda in a way that offers it a genuine role in the new system rather than positioning it as a defender of the old one.

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CHAPTER THIRTY-SEVEN: THE TRANSITION FRAMEWORK

Section 37.1: The Phasing Strategy

The transition from the current fragmented legal education admission system to the national Bangladesh Law Aptitude Test system cannot be accomplished overnight, and attempting to do so would generate political resistance and implementation failure that could set the reform back for a generation. A carefully phased transition strategy, which moves deliberately from the current system to the new one over a period of approximately five years, is both practically more achievable and politically more sustainable than a rapid, comprehensive implementation.

Phase One, covering Years One and Two of the transition, involves the establishment and capacity-building of the BLATB. During this phase, the Parliament should enact the legislation establishing the BLATB, the Board of Governors should be constituted, the Director-General and core secretariat staff should be appointed, and the Question Development Committee should be formed. During Phase One, no operational BLAT is administered; instead, the BLATB focuses entirely on question development and piloting, governance framework development, the design of the equity provisions and preparation support framework, and consultation with law programs, student bodies, the Bar Council, and the broader legal community about the specifics of the test design. This consultation is not merely procedural; it is an essential mechanism for building the stakeholder engagement and legitimacy that the new system will require to operate effectively.

Phase Two, covering Years Three and Four, involves the voluntary piloting of the BLAT. During this phase, the BLAT is administered for the first time, but its use by law programs is voluntary rather than mandatory. Programs that choose to participate receive BLAT scores for their applicants and can use those scores in their admissions decisions, but are not required to do so. The voluntary phase serves three purposes: it provides the first operational data on the BLAT's performance, including its score distributions across different candidate groups, its relationship with HSC results, and the practical logistics of administration and score reporting; it allows law programs to begin incorporating BLAT scores into their admissions processes gradually, building the institutional knowledge and decision-making frameworks that effective use of the scores requires; and it generates public familiarity with the BLAT as a concept and an institution, reducing the anxiety and resistance that a sudden mandatory implementation would generate.

Phase Three, beginning in Year Five, involves the mandatory implementation of the BLAT as a required element of legal education admissions at all accredited law programs. At this point, all candidates for admission to accredited LLB programs must have a valid BLAT score, and all accredited programs must incorporate BLAT scores into their admissions decisions. The contextual admissions framework becomes mandatory, and the equity monitoring and reporting requirements come into full force. The preparation support framework is fully operational, with free materials widely available and preparation programs running in schools across the country.

Section 37.2: Managing the Disruption to Existing Institutions

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The transition to a national admission test will disrupt existing institutional arrangements in ways that create both winners and losers among law programs. Institutions that have maintained rigorous admissions standards through their own processes will find that the BLAT largely validates their existing selectivity, making the transition relatively smooth. Institutions that have had low admissions standards, particularly those that effectively admitted all applicants who could pay, will find that the BLAT creates a real threshold for admission that their existing student body may not consistently meet, threatening their enrollment levels and financial sustainability.

The BLATB and the UGC should work together to develop a support program for institutions facing enrollment challenges as a result of the BLAT's introduction. This support should not take the form of exempting poorly performing institutions from the BLAT requirements: doing so would undermine the entire reform. Instead, it should take the form of institutional development support, helping these institutions to improve their educational quality and the attractiveness of their programs to well-qualified candidates, and financial support for student scholarships at institutions serving disadvantaged communities, which can attract candidates who are eligible for the contextual admissions provisions.

The National University law college sector requires special consideration in the transition framework. The National University colleges serve a large number of students from disadvantaged backgrounds who may face greater challenges in meeting the BLAT threshold than students at more elite institutions. The transition framework should include a specific provision for National University colleges: a defined proportion of places at these colleges should be reserved for contextual candidates under the proportional band approach, with a lower absolute BLAT threshold than that applied to standard-track candidates, and these places should be supported by intensive academic support programs that help contextually admitted students develop the additional skills they need to succeed in their programs.

Section 37.3: The Legal Challenge Landscape

Any high-stakes national admission test will generate legal challenges, and the BLATB must be designed to withstand those challenges. The most likely legal challenges fall into several categories. Constitutional challenges may argue that the BLAT violates the constitutional right to education or the principle of non-discrimination by producing test results that are correlated with social background. Procedural challenges may argue that specific aspects of the test administration violated the rights of particular candidates. Substantive challenges may argue that specific questions were ambiguous, incorrect, or biased. And institutional challenges from law programs may argue that the mandatory use of BLAT scores infringes their institutional autonomy.

The constitutional challenges can be anticipated and addressed in the design of the legislation. The legislation should include findings of fact that establish the public interest justification for the BLAT, including the evidence of widespread inadequacy in current legal education admissions and the evidence that a well-designed aptitude test provides a more equitable selection mechanism than informal institutional processes. It should also include explicit

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provisions for the contextual admissions framework, establishing that the BLAT system is designed to promote rather than undermine equity of access to legal education.

The procedural and substantive challenges should be addressed through robust challenge procedures built into the BLATB's governance framework. Every candidate should have a right to challenge the scoring of their examination within a defined period after score release, and a defined procedure for reviewing such challenges should be established, including the possibility of independent review by a panel appointed by the BLATB's Board. Questions that are challenged on grounds of ambiguity or incorrectness should be reviewed by the Question Development Committee, and where challenges are upheld, affected candidates should receive adjusted scores and an explanation of the adjustment.

The institutional autonomy challenges from law programs raise questions about the appropriate balance between institutional autonomy and public regulation of professional education. The constitutional framework of Bangladesh includes protections for institutional autonomy in higher education, but these protections have consistently been interpreted by the courts as compatible with public regulation in the public interest. The legislation establishing the BLAT should draw on the constitutional jurisprudence developed in the two Supreme Court decisions on legal education quality discussed in Part Three, which established that the public interest in the quality of legal education justifies regulatory intervention even at the cost of some institutional autonomy.

CHAPTER THIRTY-EIGHT: PROFESSIONAL DOCTORAL PROGRAMS AND LEGAL SPECIALIZATION: THE ADMISSIONS DIMENSION

Section 38.1: The Doctoral Admissions Question

Part Four's remit includes not only the admissions to undergraduate LLB programs but also the admission dimension of the professional doctoral programs and legal specialization pathways that Parts Eight and Seven of this textbook, respectively, will address in detail. While the detailed design of these programs is left to those Parts, the admissions dimension deserves treatment here because it is philosophically and institutionally connected to the BLAT system being designed for undergraduate legal education.

The admission to professional doctoral programs in law (Doctorate in Legal Practice or similar designations) is governed by different considerations from undergraduate admissions. Candidates for doctoral programs will already have law degrees and substantial professional experience; they will be selecting programs based on their professional development needs rather than their initial intellectual aptitude; and the relevant qualities for assessment are professional achievement, research capability, and the specific areas of specialization they wish to develop. A standardized aptitude test of the BLAT type is therefore not appropriate for doctoral admissions; instead, admissions to professional doctoral programs should be based on academic transcripts, professional portfolios, research proposals or statements of purpose, professional references, and, where appropriate, interviews.

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The governance of professional doctoral admissions should be the responsibility of individual institutions, subject to the general accreditation framework developed by the National Legal Education Commission proposed in Part Three. The BLATB's role in professional doctoral admissions is therefore limited: it does not administer a separate doctoral admissions test but may, in time, develop a framework for recognizing prior BLAT scores as evidence of analytical ability that can inform doctoral admissions decisions, particularly for candidates whose professional experience is not complemented by strong academic records.

Section 38.2: Specialization Pathways and Entry Standards

The legal specialization framework proposed in Part Seven of this textbook will create pathways for lawyers with established practice experience to obtain formal recognition of specialist expertise in specific fields such as commercial law, human rights law, environmental law, family law, intellectual property, and others. The admissions to these specialization programs are distinct from both undergraduate and doctoral admissions; they are essentially professional development programs for qualified lawyers rather than initial professional formation programs.

The admissions criteria for specialization programs should be governed by the same accreditation framework as other legal education programs, with the specific requirements set by the organizations responsible for each specialization pathway in consultation with the Bar Council and the relevant professional communities. BLAT scores are not relevant to these admissions decisions, since all candidates will already be enrolled advocates. The relevant criteria are professional experience in the relevant area, evidence of commitment to continued professional development, and, where appropriate, a preliminary assessment of the candidate's existing knowledge and skills in the specialization area.

CHAPTER THIRTY-NINE: SYNTHESIS AND CONCLUSION OF PART FOUR

Section 39.1: The Integrated Vision

The argument of Part Four can be stated compactly: Bangladesh needs a nationally standardized aptitude test for admission to LLB programs because the current absence of such a test is one of the most important structural drivers of the legal education quality crisis documented in Part Three, and because a well-designed aptitude test, administered by an independent and accountable institution, supported by comprehensive equity provisions, and used as part of a holistic admissions process, is a genuinely superior mechanism for selecting those who are most likely to benefit from and contribute to legal education and the legal profession.

This argument rests on both empirical and normative foundations. The empirical foundation is the extensive international research evidence, reviewed in Chapter Thirty, showing that aptitude tests designed to measure comprehension, reasoning, and analytical ability are the strongest predictors available of success in legal education, significantly more powerful than prior examination grades alone. The normative foundation is the analysis in Chapter Twenty-Nine showing that meritocratic selection for legal education, properly understood to include attention

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to how social circumstances distort the relationship between measured performance and underlying ability, is both philosophically defensible and practically superior to the available alternatives.

The integrated vision of the Part is of a reformed legal education system in which the Bangladesh Law Aptitude Test serves as the standardized entry point, the National Legal Education Framework described in Part Three governs the quality of the education provided within that entry point, the professional formation system described in Parts Five and Six builds on the foundation that legal education provides, and the specialization and doctoral programs described in Parts Seven and Eight provide the pathways for continued professional development that a mature and sophisticated legal profession requires.

Section 39.2: The Principal Controversies and Their Resolution

Several principal controversies attend the proposal for a national LLB admission test, and this Part's conclusion is the appropriate place to address them directly and fully.

The controversy about cultural bias in standardized testing is the most philosophically serious. The argument that any standardized test will encode the cultural values and intellectual preferences of those who design it, systematically advantaging those whose backgrounds are most similar to the designers', is a genuine and important concern. The response given in this Part is that well-designed aptitude tests, subjected to systematic bias analysis and continuously monitored for differential performance across demographic groups, are significantly less susceptible to cultural bias than informal selection processes, and that the appropriate response to the residual cultural bias of standardized tests is systematic attention to bias in test design rather than abandonment of standardized testing.

The controversy about the coaching industry and the commodification of legal education access is addressed in Chapter Thirty-Six. The response is that coaching effects on well-designed comprehension-based tests are modest, that free preparation materials of high quality can significantly reduce the coaching advantage, and that the alternative, no standardized test, makes admissions even more dependent on social capital and commercial advantage than a well-governed national test.

The controversy about institutional autonomy and the authority of law programs to determine their own admissions is addressed in Section 37.3. The response is that institutional autonomy in professional education is always limited by the public interest in the quality of the profession produced, and that the Supreme Court's jurisprudence on legal education quality has already established the constitutional legitimacy of public regulatory intervention in legal education admissions.

The controversy about whether a standardized test can adequately assess the character and commitment qualities that professional practice requires is addressed in Section 35.2. The response is that the BLAT is proposed not as the sole criterion for admissions but as one element of a holistic process, and that character and commitment are legitimately assessed through the additional elements of the holistic process.

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The controversy about the geographic and socioeconomic equity of a national test in a country as unequal as Bangladesh is addressed comprehensively in Chapter Thirty-Two. The response is that the equity provisions proposed, including the contextual admissions framework, the preparation support program, the special provisions for particular groups, and the mandatory equity monitoring, are designed to address this concern as comprehensively as the available evidence supports, while acknowledging that no admissions system can overcome in one generation the accumulated educational inequalities of many.

Section 39.3: The Relation Between the BLAT and the Bar Council Enrollment Examination

A recurring source of potential confusion in discussions of legal education admissions reform is the relationship between the proposed Bangladesh Law Aptitude Test, which governs entry to law school, and the Bar Council enrollment examination, which governs entry to the practicing bar. These are two distinct gatekeeping mechanisms at two different points in the legal professional formation pipeline, and they serve different purposes.

The BLAT is a test of intellectual aptitude: it measures the reading, reasoning, and analytical abilities that are prerequisites for benefiting from legal education. It selects who gets the opportunity to be educated in law. It does not test legal knowledge, since candidates take it before they have studied law, and it does not test professional competence, since candidates who pass it have not yet undergone professional formation.

The Bar Council enrollment examination is a test of professional competence: it assesses whether graduates of law programs have developed the knowledge and skills required for independent legal practice. It selects who gets the opportunity to practice law. It does test legal knowledge, since candidates take it after they have studied law for several years, and it does assess professional competence across the substantive and procedural areas required for practice.

The reform of the enrollment examination, which Part Two addressed in detail, is therefore complementary to but distinct from the reform of the admissions system proposed in this Part. A successfully reformed admissions system, by producing law graduates who are better intellectually prepared and whose education has been of higher quality, will improve the pool of candidates presenting for the enrollment examination. A successfully reformed enrollment examination, by assessing professional competence more accurately and comprehensively, will set a clearer standard for what legal education must achieve. Together, the two reforms constitute a mutually reinforcing system that can, over a generation, transform the quality of the legal profession in Bangladesh.

BIBLIOGRAPHICAL NOTES AND REFERENCES FOR PART FOUR

The primary empirical foundation for the assessment science arguments in this Part is the Law School Admission Council's ongoing program of validity research. The most significant recent document is the Summary of 2021-2025 LSAT Correlation Study Results, published by LSAC in

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2025, which provides comprehensive evidence on the predictive validity of LSAT scores across five consecutive admissions cycles and confirms the long-standing finding that LSAT scores are the best single predictor of first-year law school performance. The 2025 LSAC report is supplemented by the analysis published in the Excess of Democracy blog in March 2025, which critically examines the ways in which law school admissions practices have not kept pace with the evolving evidence on LSAT use, particularly the evidence favoring average score over highest score for predictive validity.

The LSAT format change of August 2024 and its consequences are documented in analysis published on TaxProf Blog in July 2025, reporting on the score inflation that followed the removal of the analytical reasoning section and raising questions about the implications for the test's predictive validity. The 2025 AccessLex research on UGPA growth as a predictor of law school success provides an important complementary perspective, suggesting that academic improvement trajectories, as well as absolute performance levels, contain useful predictive information for law school admissions.

On the Indian CLAT system, the Wikipedia article on the Common Law Admission Test, updated as of February 2026, provides the most comprehensive current overview of the CLAT's structure, governance, and participating institutions. The figure of approximately 90,000 CLAT candidates for 2026 reflects the scale of the system as documented in that source. The CLAT Consortium's official communications and the extensive reporting on CLAT in Indian legal media provide the background on the system's evolution and controversies.

The philosophical foundations of the admissions analysis draw on the following primary sources: John Rawls, A Theory of Justice (Harvard University Press, 1971, revised edition 1999); Ronald Dworkin, Taking Rights Seriously (Harvard University Press, 1977), particularly the essays on reverse discrimination and affirmative action; Amartya Sen, The Idea of Justice (Harvard University Press, 2009), particularly the analysis of capabilities and opportunity; Martha Nussbaum, Creating Capabilities: The Human Development Approach (Harvard University Press, 2011); Michael Walzer, Spheres of Justice (Basic Books, 1983); and Anthony Kronman, The Lost Lawyer: Failing Ideals of the Legal Profession (Harvard University Press, 1993).

The Critical Legal Studies perspective on admissions and legal education draws on Duncan Kennedy, Legal Education and the Reproduction of Hierarchy (1982, published in book form by New York University Press, 2004), and Roberto Mangabeira Unger, The Critical Legal Studies Movement (Harvard University Press, 1986). The assessment fairness literature draws on Claude Steele and Joshua Aronson, "Stereotype Threat and the Intellectual Test Performance of African Americans," Journal of Personality and Social Psychology (1995), and the subsequent large literature on stereotype threat in educational assessment.

The contextual admissions literature draws primarily on research from the UK Higher Education system, particularly the work of the Sutton Trust and the Office for Students on widening participation in selective university admissions, and on the US higher education literature on holistic admissions and affirmative action, including the post-SFFA v. Harvard research on race-neutral alternatives for diversity in selective admissions contexts.

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On the political economy of admissions reform in developing country legal systems, the most relevant comparative work includes Jayanth Krishnan's research on legal education and the legal profession in India, particularly his 2013 article "Scholarly Discourse, Public Intellectuals, and the Indian Academic Legal Community" in the Journal of Legal Education, and Lawrence Friedman's sweeping comparative analysis in The Legal System: A Social Science Perspective (Russell Sage Foundation, 1975), which frames legal education reform as an element of broader processes of legal development in modernizing societies.

The Islamic jurisprudential analysis in Section 29.4 draws on al-Shatibi, Al-Muwafaqat fi Usul al-Sharia, translated into English as The Reconciliation of the Fundamentals of Islamic Law by Imran Ahsan Khan Nyazee (Garnet Publishing, 2011), and on the contemporary maqasid scholarship of Jasser Auda, Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach (International Institute of Islamic Thought, 2008).

END OF PART FOUR

Part Five will develop the comprehensive curriculum reform proposal for Bangladeshi legal education in full technical detail: a specified learning outcomes framework for reformed LLB programs, detailed curriculum design recommendations for both mandatory and elective components of the degree, pedagogical standards for each element of the reformed curriculum, assessment design principles consistent with the outcomes framework, and a faculty development strategy that addresses both the immediate qualification deficit and the long-term scholarly culture development that world-class legal education requires.

Part Six will develop the clinical legal education and access to justice proposal in full detail, including the design of law school clinics, the external placement framework, the simulation-based clinical education model, the community legal education center network, the funding framework for sustained clinical legal education, and the assessment of clinical competencies.

Parts Seven through Twelve will address, respectively: the specialist accreditation framework; the professional doctoral program; personal law and its reform; the International Crimes Tribunal and transitional justice; the court system, case backlog, and procedural reform; and the future of Bangladesh's legal system in the global legal order.

PART FIVE: THE REFORMED CURRICULUM OF LEGAL EDUCATION IN BANGLADESH: DESIGN, CONTENT, PEDAGOGY, AND ASSESSMENT

Commentary on the Legal System of Bangladesh, Bar Council, and Necessary Reforms

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PREFACE TO PART FIVE

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Parts Three and Four of this commentary established the structural and admissions framework within which reformed legal education in Bangladesh must operate. Part Three diagnosed the comprehensive failures of the existing system and proposed the institutional architecture of a national legal education framework. Part Four designed the gateway mechanism, the Bangladesh Law Aptitude Test, through which better-prepared and more equitably selected students will enter law programs. Part Five now addresses what happens inside those programs once the right students are admitted: the content of what is taught, the methods by which it is taught, the means by which learning is assessed, and the relationship between all three.

This is the most technically demanding part of the reform agenda, because curriculum design, pedagogy, and assessment are specialized disciplines that require both theoretical understanding and practical experience of legal education to apply well. The arguments made here draw on the global literature on legal education reform, on the specific tradition of Bangladeshi legal scholarship, on the jurisprudential and philosophical frameworks introduced in Parts One and Three, and on the most recent empirical evidence about what kinds of legal education actually produce competent, ethical, and publicly oriented legal professionals.

The central argument is one that has been building through the preceding Parts and that now requires full elaboration: the existing curriculum of most Bangladeshi law programs is not merely performing the right educational tasks badly. It is performing the wrong educational tasks. It is teaching students to memorize rules rather than to understand law as a dynamic, contested, philosophically grounded system of principles. It is assessing students on their capacity for information retrieval rather than their capacity for analysis, argument, and judgment. It is organizing the intellectual content of legal education around the doctrinal categories of nineteenth-century English law rather than around the legal needs of a twenty-first-century democratic Bangladesh. And it is doing all of this in an institutional culture that has largely abandoned the ambition of genuine intellectual life in favor of the production of examination candidates. Reforming this curriculum is therefore not a matter of adding some new subjects or adjusting some assessment weightings. It is a matter of rethinking the entire educational project from its philosophical foundations outward.

The reformed curriculum proposed in this Part is organized around the learning outcomes framework introduced in Part Three and developed in detail in Chapter Forty below. It is designed to be achievable within the institutional constraints of Bangladeshi legal education, while simultaneously pushing those constraints outward by articulating a vision of what the system should aspire to rather than merely what it currently manages. It is designed with full awareness of the resource constraints, the faculty development challenges, and the cultural resistances that any serious curriculum reform must navigate. And it is designed with the understanding that curriculum reform without corresponding reform of pedagogy and assessment is largely futile: the content can change while the classroom culture and the examination system remain unchanged, and if that happens, the content change will produce little genuine improvement in the quality of learning.

The Part proceeds through nine substantive chapters. The first establishes the learning outcomes framework that governs the entire curriculum design. The second examines the foundational year of legal education and the intellectual orientation it should provide. The third, fourth, and fifth

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develop the content of the core substantive law curriculum, the legal skills curriculum, and the professional responsibility and jurisprudence curriculum respectively. The sixth addresses the elective and specialization curriculum. The seventh develops the pedagogy of reformed legal education, engaging with the most significant contemporary debates in legal education methodology. The eighth examines assessment design in full technical detail. The ninth addresses the faculty development strategy required to implement the reformed curriculum across the diversity of Bangladeshi legal institutions.

CHAPTER FORTY: THE LEARNING OUTCOMES FRAMEWORK

Section 40.1: From Coverage to Competence: The Conceptual Shift

The most fundamental conceptual shift required in Bangladeshi legal education is from a coverage-based to a competence-based understanding of the curriculum's purpose. A coverage-based curriculum is one whose defining question is: what legal material should we cover in the time available? The answer to this question generates a list of subjects and, within each subject, a list of topics that students must be exposed to. The curriculum is judged by whether it covers the right things in sufficient breadth and depth, and students are assessed on whether they have absorbed what has been covered. The implicit model of learning is one of transmission: the teacher possesses the relevant knowledge, conveys it to the students, and the students demonstrate receipt of it in the examination.

A competence-based curriculum is one whose defining question is: what must students be able to do by the time they graduate? The answer to this question generates a set of learning outcomes, specified in terms of knowledge, skills, and dispositions, that graduates should have developed. The curriculum is judged by whether it develops those outcomes in students, and students are assessed on whether they can demonstrate the specified competencies. The implicit model of learning is one of development: the teacher creates conditions in which students can develop competencies through engagement with legal material, and the examination tests whether those competencies have actually been developed.

This conceptual shift has been the single most important development in legal education theory over the past two decades. The American Bar Association's introduction of outcome-based accreditation standards for US law schools in 2016, the ABA Rule of Law Initiative's Legal Education Reform Index developed for use in emerging democracies, the Solicitors Regulation Authority's Solicitor Qualifying Examination introduced in England and Wales in 2021, the Philippines Legal Education Board's Revised Model Law Curriculum, and the Singapore Law School's comprehensive curriculum review all reflect the same fundamental move from coverage to competence. The January 2025 research published in the Asian Journal of Legal Education specifically documented that the access to justice crisis in Bangladesh is directly connected to law schools producing graduates who have been exposed to coverage but have not developed genuine competence, and the December 2025 study in the Lead City University Law Journal reviewing global clinical legal education confirmed that experiential learning modalities are universally recognized as the primary vehicle for competence development.

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The learning outcomes framework proposed for Bangladesh identifies five domains of competence that every accredited law program must develop in its graduates. These five domains are: legal knowledge and understanding; legal analysis and reasoning; legal research; legal communication and professional skills; and professional values and identity. Each domain is specified at three levels of performance, describing what an adequate, a good, and an excellent performance of the relevant competency looks like. These specifications provide the standard against which both curriculum design and student assessment can be evaluated.

Section 40.2: Domain One: Legal Knowledge and Understanding

Legal knowledge is the necessary but not sufficient foundation of legal competence. A lawyer must know what the law is in order to apply it, advise about it, or argue about it. But knowing the law means something considerably more than being able to recite statutory provisions or summarize case holdings: it means understanding the law as a coherent system of principles and rules, understanding how the different components of the system relate to each other, understanding the historical development that produced the law in its present form, understanding the constitutional and jurisprudential framework within which specific legal rules operate, and understanding the relationship between positive law and the social and moral values it is supposed to serve.

The minimum legal knowledge outcomes for graduates of accredited Bangladesh law programs should include the following components. Graduates must have thorough and well-organized knowledge of the constitutional framework of Bangladesh, including the fundamental rights provisions, the structural principles of separated powers and judicial independence, the mechanisms of constitutional review, and the jurisprudential development of constitutional law through the decisions of the Supreme Court. Graduates must have systematic knowledge of the major areas of private law that govern the most common legal relationships among citizens: contract law, tort law, property law, and family law, including knowledge of the principal statutory provisions, the major case law developments, and the relationship between legal doctrine and the social purposes it serves. Graduates must have systematic knowledge of the criminal law, including both the substantive offences under the Penal Code and the procedural framework of the Code of Criminal Procedure, sufficient to understand the criminal justice process from investigation through trial to appeal. Graduates must have systematic knowledge of civil procedure sufficient to understand how civil disputes are litigated through the court system. Graduates must have foundational knowledge in at least two specialized areas of law beyond the general core, chosen from a range of options including commercial law, labor law, human rights law, environmental law, intellectual property law, international law, or family law in greater depth. And graduates must have familiarity with the Islamic jurisprudential tradition and its continuing relevance to personal law in Bangladesh, with the Hindu legal tradition as it applies to the Hindu minority community, and with the constitutional framework governing the coexistence of these personal law systems alongside the general law.

Section 40.3: Domain Two: Legal Analysis and Reasoning

Legal analysis and reasoning is the capacity that distinguishes a genuine lawyer from a person who merely knows some legal rules. It is the capacity to identify legal issues in complex factual

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situations, to apply relevant law to specific facts in a principled and consistent manner, to construct legal arguments, to identify and engage with counterarguments, to recognize the limits of legal authority and the situations in which judicial creativity is both necessary and legitimate, and to synthesize legal materials from multiple sources into coherent legal positions.

The minimum legal analysis and reasoning outcomes for graduates of accredited Bangladesh law programs should include the following. Graduates must be able to identify, from a complex factual scenario, all the legally relevant issues that require analysis, without prompting from an examiner. They must be able to apply applicable legal rules to specific facts with precision, distinguishing situations in which a rule clearly applies from situations in which its application is uncertain, and providing a principled explanation of the distinction. They must be able to construct an argument in support of a legal position, identifying the strongest available legal authorities, marshaling them in a logical sequence, and anticipating and responding to the most significant objections. They must be able to analyze the reasoning of judicial decisions, identifying the ratio decidendi, the obiter dicta, the legal principles the decision establishes, and the limits of its authority. They must be able to distinguish cases with apparently similar facts that are legally different, and identify cases with apparently different facts that are legally analogous. And they must be able to engage with jurisprudential arguments about what the law should be, not merely what it is, demonstrating awareness of the relationship between legal doctrine and the moral and political values at stake in legal decisions.

Section 40.4: Domain Three: Legal Research

Legal research is the capacity to find out what the law is on any question, using all available primary and secondary sources, evaluating the quality and relevance of what is found, and synthesizing the results into a coherent and accurate account of the legal position. It is a competency that is foundational to every other form of legal work: advising a client, drafting a document, preparing an argument, or writing a scholarly analysis all require legal research as a first step, and poor legal research produces poor outcomes in all of these activities.

The minimum legal research outcomes for graduates of accredited Bangladesh law programs should include the following. Graduates must be able to construct an effective research strategy for a legal question they have not previously encountered, identifying the primary sources, secondary sources, and related materials that are likely to provide relevant information. They must be able to search effectively in both paper and electronic legal resources, including the Bangladesh Laws of Bangladesh database, the official Supreme Court reports, academic legal journals, and international legal databases accessible to Bangladeshi researchers. They must be able to evaluate the authority and reliability of different legal sources, distinguishing binding from persuasive authority, primary from secondary sources, and current from superseded law. They must be able to synthesize research findings from multiple sources into a coherent account of the law, identifying areas of uncertainty, conflicting authority, and unsettled legal questions. And they must be able to produce a research memorandum that communicates the results of their research clearly and accurately, identifying the question researched, the sources consulted, the legal position as they understand it, and the degree of confidence warranted by the available authority.

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Section 40.5: Domain Four: Legal Communication and Professional Skills

Legal communication and professional skills are the practical capacities through which lawyers translate their legal knowledge, analytical ability, and research findings into effective professional action. They include oral communication, written communication, client interaction, negotiation, and the management of legal files and processes. These are the skills that clients most directly experience and value, and they are the skills whose absence is most immediately felt when graduates enter practice inadequately prepared.

The minimum legal communication and professional skills outcomes for graduates of accredited Bangladesh law programs should include the following. Graduates must be able to communicate legal advice clearly and accurately in writing, adapting their register and style to the needs of different audiences, including formal legal memoranda for professional colleagues and client-facing advice letters that translate legal complexity into language a non-lawyer can understand. They must be able to draft basic legal documents, including simple contracts, affidavits, applications, and pleadings, accurately and appropriately. They must be able to present a legal argument orally, in a structured and persuasive manner, responding to questions from a judge or opponent without losing the thread of their argument. They must be able to conduct a client interview, identifying the client's problem, gathering the relevant factual information, and communicating their initial assessment of the legal issues in a way that is both accurate and sensitive to the client's emotional situation. They must have a basic understanding of negotiation principles and be able to conduct a simple legal negotiation under supervision. And they must have a working knowledge of the procedural requirements of filing documents with courts, managing limitation periods, and meeting other formal legal obligations.

Section 40.6: Domain Five: Professional Values and Identity

Professional values and identity represent the ethical and dispositional foundation without which legal knowledge, analytical skill, and practical competence cannot be adequately directed. A lawyer without genuine commitment to honesty, to the independence of the profession from improper pressures, to the duty to the court, to the interests of clients, and to the constitutional values of justice and the rule of law is a technical expert whose abilities may cause harm rather than good. Professional values are not a supplementary dimension of legal education that can be added through an ethics module; they must permeate the entire educational experience, from the way that faculty model professional behavior in the classroom to the way that assessment rewards or fails to reward ethical reasoning.

The minimum professional values outcomes for graduates of accredited Bangladesh law programs should include the following. Graduates must understand and be genuinely committed to the core ethical obligations of an advocate in Bangladesh: the duty of confidentiality, the duty of competence, the duty of loyalty to the client, the duty of candor to the court, the duty to the administration of justice, and the obligations arising from the Bangladesh Bar Council's Canons of Professional Conduct and Etiquette. They must be able to identify ethical issues in realistic professional scenarios, reason through the competing considerations, and reach a defensible conclusion about the appropriate course of action. They must understand the constitutional framework of fundamental rights and its implications for the conduct of legal practice, including

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the obligation not to participate in or facilitate human rights violations. They must have developed a sense of professional responsibility toward the access to justice mission of the legal profession, recognizing the obligation of lawyers in a democratic society to make legal services accessible to those who cannot otherwise afford them. And they must have reflected seriously on their own professional identity, their reasons for entering the legal profession, and the kind of lawyer they aspire to be, in ways that connect their professional practice to the values and purposes they genuinely hold.

CHAPTER FORTY-ONE: THE FOUNDATIONAL YEAR: ORIENTATION, METHODS, AND THE INTELLECTUAL FRAME

Section 41.1: Why Foundations Matter

The first year of a law program is the most important, not because the law studied in the first year is more important than what comes later, but because it is in the first year that students form their understanding of what kind of discipline law is, what kind of thinking legal study requires, and what kind of professional they might become. A first year that introduces students to law as a memorization exercise prepares them for a career of mechanical rule-application; a first year that introduces them to law as an intellectually demanding discipline of analysis, argument, and principled judgment prepares them for a career of genuine professional reasoning. The difference between these two introductions is not merely academic: it shapes the entire subsequent educational experience and, through that, the quality of professional practice.

The foundational year of the reformed LLB program should therefore be specifically designed to achieve three objectives that current first-year programs mostly fail to pursue. The first is intellectual orientation: introducing students to law as a discipline with a specific epistemology, a specific methodology, and a specific relationship to the broader human enterprise of ordering social life through normative rules. The second is skills foundation: developing the reading, writing, research, and analytical skills that legal study requires before students encounter the full complexity of substantive law doctrine. The third is values formation: beginning the professional identity formation process that should continue throughout the program, introducing students to the ethical framework of the legal profession and to the constitutional and democratic values that give professional legal work its public significance.

Section 41.2: Legal Methods and the Nature of Law

The foundational year must begin with a dedicated course on legal methods, sometimes called legal systems or introduction to law, that addresses the most fundamental questions about the nature of law before students engage with specific areas of doctrine. This course has no precise equivalent in the current curriculum of most Bangladeshi law programs, where students typically begin immediately with substantive doctrinal subjects and are left to work out for themselves, if they ever do, how the different subjects relate to each other and what kind of intellectual enterprise law is.

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A well-designed legal methods course should address the following questions. What is law? This question, which Part One of this commentary addressed in relation to the multiple jurisprudential traditions of Bengal, deserves sustained treatment in the curriculum because it is genuinely difficult and because different answers to it have significant implications for how specific legal questions are resolved. Students should be introduced to the major traditions of legal philosophy: natural law theory in its classical and contemporary forms; legal positivism in the tradition of Austin, Hart, and the later refinements of Joseph Raz; Ronald Dworkin's interpretivism; and the critical traditions of Legal Realism, Critical Legal Studies, feminist legal theory, and postcolonial legal critique. These should not be taught as historical curiosities but as live intellectual frameworks that bear directly on the interpretation of specific legal rules and the evaluation of specific judicial decisions.

What are the sources of law in Bangladesh? Students must understand the formal hierarchy of legal sources, from the Constitution through parliamentary legislation, subsidiary legislation, judicial precedent, and customary practice, and must understand how conflicts between these sources are resolved. They must understand the relationship between domestic law and international law, which is of increasing practical importance as international human rights law, international trade law, and environmental law all bear increasingly directly on Bangladeshi legal practice. And they must understand the distinctive position of Islamic personal law and Hindu personal law within the Bangladeshi legal system, which cannot be understood without engaging with the jurisprudential traditions of fiqh and Dharmashastra that Part One introduced.

How do courts reason? Students must learn to read and analyze judicial decisions before they can learn the doctrine those decisions establish. The method of case reading, identifying the facts material to the decision, extracting the ratio decidendi from the obiter dicta, understanding the relationship between the decision and the authorities on which it relies, and evaluating the quality of the reasoning, must be explicitly taught rather than assumed. The method of statutory interpretation, including the literal rule, the golden rule, the mischief rule, and the purposive approach endorsed by modern courts, must be taught as a set of conscious analytical techniques rather than encountered haphazardly in specific doctrinal contexts.

How is legal writing structured? Students must learn the conventions of legal writing, including the IRAC (Issue, Rule, Application, Conclusion) structure and its variants, before they are asked to produce legal analysis in examinations. This cannot be assumed as part of general academic writing competence, because legal writing has specific conventions that differ significantly from other forms of academic writing, and that take time and practice to develop.

Section 41.3: The History and Theory of Bangladeshi Law

The foundational year should include a dedicated course on the history and theory of Bangladeshi law that addresses the content developed in Part One of this commentary at the level appropriate for first-year students. This course should provide students with a coherent historical narrative of how the legal system of Bangladesh came to have its present form, moving from the pre-colonial plural legal universe through the colonial transformation to independence, constitution-making, and the legal developments of the post-independence period. It should introduce students to the major jurisprudential frameworks relevant to the Bangladeshi context:

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the Islamic tradition of fiqh, the Hindu tradition of Dharmashastra, the common law tradition, and the constitutional tradition of South Asian democracy.

This course serves multiple educational purposes beyond its historical and theoretical content. It provides students with the context within which the doctrinal subjects they will study subsequently can be understood, preventing the common experience of studying specific legal rules without knowing where they came from or why they have the form they do. It develops students' awareness of the cultural plurality of the Bangladeshi legal system and the continuing relevance of non-common law normative traditions to the lives of many Bangladeshi citizens. And it begins the development of the critical perspective on law that a genuinely educated legal professional must have: the awareness that the legal system is not a natural given but a human construction, shaped by political power, cultural assumptions, and historical contingency, and therefore capable of being reformed.

The pedagogical approach to this course should be deliberately different from the lecture-dominant approach of most doctrinal teaching. The history and theory of Bangladeshi law is a subject that invites discussion, debate, and critical engagement rather than the passive reception of settled doctrine. Students should be assigned primary source readings, including historical documents like the Permanent Settlement of 1793, the Indian Penal Code of 1860, the Bangladesh Constitution of 1972, and landmark Supreme Court decisions, and should be asked to analyze and discuss them in seminar sessions. They should be asked to write reflective essays engaging with jurisprudential questions rather than memorizing and reproducing correct answers. And they should be encouraged to make connections between the historical and theoretical material and the contemporary legal questions they encounter in other courses and in the news.

Section 41.4: Constitutional Law as the Spine of the Curriculum

Constitutional law should not be a single first-year subject but the intellectual spine of the entire law program, with the foundational constitutional law course in the first year providing the framework within which all subsequent doctrinal subjects are understood. The Constitution of Bangladesh is not just one law among others; it is the supreme law that gives all other laws their validity, that defines the fundamental rights of citizens, that establishes the institutions of government and defines their relationships, and that articulates the most fundamental values of the Bangladeshi polity. A law program in which students study contract, tort, and criminal law without continuously connecting these subjects to the constitutional framework misses the most important organizing principle of the entire legal system.

The first-year constitutional law course should cover the text and structure of the 1972 Constitution, its historical origins in the independence struggle and the Mujibnagar government's constitutional thinking, its fundamental rights provisions and their relationship to international human rights standards, its structural principles of parliamentary democracy, judicial independence, and the separation of powers, and the major constitutional developments since 1972 including the significant amendments and the evolution of constitutional jurisprudence in the Supreme Court. The course should be taught with explicit attention to the constitutional reform debates of 2024-2025, including the recommendations of the Constitutional Reform Commission led by Ali Riaz, the constitutional amendments proposed and adopted following the

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July Uprising of 2024, and the ongoing debates about the constitutional framework of Bangladeshi democracy in the post-Hasina political era. These contemporary developments are not distractions from the serious study of constitutional law; they are its most vivid and immediate illustration.

The pedagogical approach to constitutional law should combine close textual analysis of constitutional provisions, historical contextualization of constitutional choices, doctrinal analysis of Supreme Court decisions, and critical engagement with constitutional theory. Students should read not only the Constitution itself but the major constitutional law decisions of the Supreme Court and the scholarly commentary on those decisions. They should be asked to analyze constitutional problems, applying the relevant provisions and precedents to realistic scenarios. And they should be asked to engage with theoretical debates about constitutional design, drawing on the global literature of comparative constitutionalism.

CHAPTER FORTY-TWO: THE CORE SUBSTANTIVE LAW CURRICULUM

Section 42.1: The Organizing Principle: Law as a Social Practice

The core substantive law subjects of the reformed curriculum should be organized around the principle that law is a social practice whose specific rules make sense only in the context of the social relationships they govern and the social purposes they serve. This principle requires that every substantive law subject be taught not only as a body of doctrine but as a response to specific social needs and problems, embedded in a historical and cultural context, and evaluated by its effectiveness in achieving its stated and unstated purposes.

Contract law, for example, should not be taught merely as the rules governing offer and acceptance, consideration, and breach. It should be taught as the legal framework for economic exchange in a market economy, with attention to the historical development of contract law as markets developed, to the relationship between contract law doctrine and economic theory, to the ways in which standard form contracts and inequality of bargaining power create practical problems that the general principles of contract law do not adequately address, and to the specific features of Bangladeshi contract law, including the Contract Act 1872 and its interpretation by Bangladeshi and Indian courts, that reflect the colonial origins and the social conditions of the subcontinent. This richer treatment of contract law is not more difficult than the purely doctrinal approach; it is intellectually more engaging, more likely to be remembered, and more likely to produce genuine understanding of the law's operation.

The same principle applies to every core substantive subject. Tort law should be taught not just as the rules governing negligence, nuisance, and defamation, but as the legal framework for allocating the costs of harmful activities in a society where the state cannot prevent all harms and where the market mechanism cannot adequately internalize all negative externalities. Criminal law should be taught not just as the definitional elements of offences and defences, but as the legal expression of a society's moral judgments about which kinds of conduct are sufficiently harmful to warrant state coercion in response, and as a site where fundamental questions about

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free will, determinism, moral responsibility, and the proper relationship between the individual and the state are daily worked out. Property law should be taught not just as the rules governing ownership and transfer of land, but as the legal framework through which a society's most fundamental asset, land, is distributed and used, with attention to the history of land ownership in Bengal, the zamindari system, the Permanent Settlement and its consequences, and the contemporary problems of landlessness and land rights in Bangladesh.

Section 42.2: The Core Subjects: Content and Balance

The core substantive law subjects of the reformed LLB curriculum should include the following, organized in a developmental sequence that builds progressively from foundations to complexity.

Contract law, taught across two semesters, should provide comprehensive coverage of the Contract Act 1872 and the principles it codifies, with sustained attention to the contemporary challenges posed by standard form contracts, electronic contracts, and the contracts of adhesion that characterize most consumer transactions in Bangladesh's developing digital economy. The teaching should engage with the economic analysis of contract law, particularly the work of scholars like Guido Calabresi and Richard Posner on the efficiency of legal rules, as well as with the critique of economic analysis from the perspective of distributive justice associated with scholars like Duncan Kennedy and Margaret Radin.

Tort law, taught across one and a half semesters, should cover the major tort categories, negligence, nuisance, defamation, trespass, and product liability, with particular attention to the public interest dimensions of tort law in Bangladesh. The environmental torts that arise from industrial pollution, the media law torts that arise from Bangladesh's lively but legally complex press environment, and the medical negligence torts that arise from the quality failures in Bangladesh's healthcare system all deserve specific attention as areas where tort law doctrine intersects with the most pressing social problems of contemporary Bangladesh.

Land law and property law, taught across two semesters, must engage directly with the complexity of Bangladeshi land law, which combines elements of the Transfer of Property Act 1882, the Registration Act 1908, the Limitation Act 1908, the Revenue laws, the Chittagong Hill Tracts land law, and the continuing influence of customary practice in many areas. The acute practical importance of land disputes in Bangladesh, which constitute a very large proportion of the civil court caseload and which reflect deep structural inequalities in land distribution, gives property law both doctrinal and social significance that must be reflected in how it is taught.

Family law, taught across two semesters, is one of the subjects where Bangladesh's legal pluralism is most directly relevant to the curriculum. The Muslim Family Laws Ordinance 1961, the Dissolution of Muslim Marriages Act 1939, the Child Marriage Restraint Act 2017, the Hindu family law as it continues to operate under the Dayabhaga school in the absence of codification, and the constitutional questions about the intersection of personal law and fundamental rights all require systematic treatment. The feminist legal scholarship on family law and its relationship to gender equality, including the work of scholars like Susan Moller Okin and the specific scholarship on South Asian family law by Flavia Agnes and Zainah Anwar, should inform how this subject is taught.

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Criminal law and procedure, taught across three semesters, requires comprehensive treatment of both the substantive law under the Penal Code 1860 and the procedural framework of the Code of Criminal Procedure 1898, with attention to the substantial body of special legislation that supplements these general codes, including the Women and Children Repression Prevention Act 2000, the Digital Security Act 2018, and its successor the Cyber Security Act 2023 and its controversial application to journalists and political dissidents. The jurisprudential dimensions of criminal law, including theories of punishment, the philosophy of criminal responsibility, and the constitutional constraints on the criminal law, deserve sustained attention as areas where doctrinal teaching must engage with the fundamental questions of political philosophy.

Evidence law, taught across one semester, covers the Evidence Act 1872 and its extensive jurisprudence, with specific attention to the evidentiary challenges posed by digital evidence, electronic communications, and the intersection of evidence law with constitutional rights including the right against self-incrimination and the right to a fair trial. The recent reforms to evidence law practice prompted by the Digital Security Act 2018 and the Cyber Security Act 2023 deserve specific treatment.

Civil procedure, taught across two semesters, covers the Code of Civil Procedure 1908 in full, with critical engagement with the procedural causes of Bangladesh's notorious case backlog problem. This is a subject where the distance between formal legal procedure and actual court practice is particularly large, and where teaching that engages with the realities of litigation in Bangladeshi courts, including the role of delay tactics, the use of injunctions and stays as instruments of harassment, and the gap between what procedural rules prescribe and what actually happens in the exercise of judicial discretion, is more educationally valuable than purely textual exposition of the Code's provisions.

Administrative law, taught across one and a half semesters, covers the law governing the exercise of public power, including judicial review of administrative action, the constitutional framework of fundamental rights and its application to administrative decisions, the specific legislation governing major regulatory agencies, and the growing body of case law on administrative law developed by the High Court Division. Given the enormous importance of administrative law in Bangladesh, where the state regulates vast areas of economic and social life and where the abuse of administrative power is a pervasive problem, this subject deserves more attention in the curriculum than it typically receives.

Section 42.3: Contemporary Legal Fields: The Missing Curriculum

The reformed curriculum must address the systematic absence of contemporary legal fields from the existing curriculum of most Bangladeshi law programs. The 2024 and 2025 research on global legal education trends consistently identifies the same emerging fields as essential components of a curriculum that prepares students for twenty-first-century legal practice: technology law including artificial intelligence, cybersecurity, and data protection; environmental and climate law; international human rights law; labor and employment law in the context of globalized supply chains; and commercial and financial law adapted to digital and global markets.

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Environmental law deserves particular emphasis in the Bangladeshi context, which cannot be overstated. Bangladesh is among the world's most climate-vulnerable countries. It faces annual flooding that displaces millions of people, coastal erosion that threatens its southern districts, river pollution that contaminates drinking water for large populations, and air pollution in Dhaka that constitutes a genuine public health emergency. The legal framework for environmental protection in Bangladesh, including the Environment Conservation Act 1995, the Environmental Court Act 2000, the Bangladesh Environment Conservation Rules 1997, and the extensive body of constitutional PIL litigation on environmental issues, is both legally complex and of urgent national importance. A law program that produces graduates without any systematic knowledge of environmental law is producing lawyers who cannot serve the most pressing legal needs of contemporary Bangladesh.

Labor and employment law is another field whose absence from most Bangladeshi law school curricula is difficult to justify. Bangladesh's garment industry employs approximately four million workers, mostly women, and the legal framework governing their employment, including the Bangladesh Labour Act 2006, the Export Processing Zone Labour Act 2010, and the extensive body of international labor standards that Bangladesh has ratified through its ILO obligations, is both practically important and intellectually rich. The Rana Plaza disaster of 2013, which killed over 1,100 garment workers and triggered international scrutiny of labor standards in Bangladesh's supply chains, is one of the most significant legal events in Bangladesh's modern history, with implications for tort law, labor law, corporate governance, and the international legal framework of supply chain accountability that deserve systematic treatment in any serious law curriculum.

Technology law, including the legal dimensions of digital communications, e-commerce, fintech, data protection, and artificial intelligence, is a field whose importance to Bangladeshi legal practice is growing rapidly. Bangladesh's digital economy is expanding quickly, with mobile financial services, e-commerce platforms, and digital government services all creating novel legal questions that practitioners need to understand. The Cyber Security Act 2023, despite its controversial application to political dissidents and journalists, has introduced a framework of digital offences that every criminal practitioner must understand. The legal framework for personal data protection, which Bangladesh lacks in comprehensive form, is an urgent legislative gap that the legal profession has a responsibility to advocate for filling.

International human rights law deserves systematic treatment as a core rather than an elective subject, for reasons that are both principled and practical. Bangladesh has ratified most of the major international human rights conventions, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child. These conventions create binding obligations on the Bangladeshi state that are justiciable before international monitoring bodies, and they inform the interpretation of constitutional fundamental rights before domestic courts. Every advocate needs to understand this international framework, and the Law Commission and the judiciary increasingly draw on it in developing Bangladeshi law.

Section 42.4: Personal Law in the Curriculum

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The treatment of personal law in the reformed curriculum requires special attention because it illustrates the distinctive challenges of teaching Bangladeshi law in a way that accurately reflects its pluralistic character. Personal law in Bangladesh is differentiated by religion: Muslims are governed by Islamic personal law for matters of marriage, divorce, dower, maintenance, and inheritance; Hindus are governed by the Dayabhaga school of Hindu personal law for inheritance and partly for family matters; and Christians are governed by specific Christian personal law statutes.

This differentiated system raises profound jurisprudential questions that the curriculum must engage with seriously. The system reflects a colonial accommodation of religious difference that has never been fully integrated into a coherent constitutional framework, and its relationship to the constitutional guarantee of equality before the law and the prohibition of discrimination on the grounds of sex is one of the most persistent jurisprudential tensions in Bangladeshi constitutional law. The reform of personal law, particularly Muslim personal law, has been a contested site of political debate for decades, with feminist scholars and women's rights advocates arguing for reform to eliminate discriminatory provisions, religious scholars arguing for the preservation of divine law from state interference, and constitutional theorists arguing about the proper relationship between religious normative systems and the secular state.

The personal law curriculum should cover not only the substantive content of the different personal law systems but the jurisprudential debate about their constitutional legitimacy, the comparative experience of other Muslim-majority countries in reforming Islamic personal law (including the influential Tunisian example, the Moroccan Moudawwana reform of 2004, and the Malaysian debates about judicial interpretation of Islamic law), and the specific problems of women who are disadvantaged by the current personal law framework in Bangladesh. This is not an invitation to indoctrinate students with a particular political position on personal law reform, but a recognition that these are the most significant jurisprudential questions in contemporary Bangladeshi law and that students who graduate without having engaged with them seriously are inadequately educated in the legal system of their own country.

CHAPTER FORTY-THREE: THE LEGAL SKILLS CURRICULUM

Section 43.1: The Skills-Doctrine Integration Problem

The most common approach to legal skills education in the law programs that take it seriously is to teach it separately from doctrinal subjects: a legal research and writing course is offered alongside the doctrinal subjects, a clinical course is added as a distinct elective or requirement, and advocacy skills are developed through a moot court competition program that operates independently of the formal curriculum. This separation is problematic because it reinforces the implicit message that doctrinal knowledge and practical skills are different kinds of things, and because it means that the skills curriculum operates without the content that gives skills exercises their intellectual substance.

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The reformed curriculum should integrate skills development into the teaching of doctrinal subjects rather than treating skills as a separate curriculum running alongside doctrine. Every doctrinal course should include written assessments that develop legal research and writing skills, through problem-based research assignments that require students to research an unfamiliar legal question and present the results in a structured memorandum. Every doctrinal course should include oral components, whether through participation in structured discussions, through the presentation of research findings, or through short advocacy exercises relevant to the specific doctrinal area. And every doctrinal course should include an element of client-perspective analysis, asking students to consider how the legal principles they are studying would actually affect the real people in whose lives these principles operate.

This integrated approach does not eliminate the need for dedicated skills courses; it complements them. The dedicated legal research and writing course, the advocacy training course, and the clinical legal education program all have specific roles that doctrinal integration cannot fulfill. But they are most effective when students arrive in them already having developed basic skills through the doctrinal curriculum, rather than encountering skills development for the first time in a course that must start from zero.

Section 43.2: Legal Research and Writing: Design of a Dedicated Course

The legal research and writing course is the single most important skills course in the reformed curriculum, because the skills it develops are prerequisites for every other form of legal work. It should run throughout the first year of the program and should be coordinated with the first-year doctrinal courses so that the research and writing exercises it assigns draw on the legal material students are simultaneously studying in their doctrinal courses.

The legal research and writing course should be structured in three phases. The first phase, occupying the first third of the year, focuses on legal research methodology: how to analyze a legal problem and identify the research questions it raises; how to use primary sources including the Laws of Bangladesh database, the Supreme Court reports, and relevant legislation; how to use secondary sources including academic journals, textbooks, and practitioner guides; how to evaluate the quality and authority of different sources; and how to organize research findings into a coherent account of the law. This phase should involve extensive hands-on practice in the law library, supervised by librarians and research support staff as well as teaching faculty.

The second phase, occupying the middle third of the year, focuses on legal writing in its major forms. Students should produce a sequence of written work products of increasing complexity and length: a short research note summarizing the law on a specific point; a more substantial research memorandum analyzing a legal problem and advising a hypothetical client; a case analysis essay examining the reasoning and significance of a specific judicial decision; and an analytical essay on a legal policy question that requires the integration of legal doctrine with policy analysis. Each of these written work products should be assessed with detailed written feedback from the teacher, and students should have the opportunity to revise and resubmit in response to feedback on at least one of the assignments.

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The third phase, occupying the final third of the year, focuses on advanced legal writing and oral communication. Students should produce a substantial research paper of at least 3,000 words on a legal topic of their own choosing, approved by the teacher, that demonstrates genuine independent research and a capacity for sustained legal analysis and argument. The paper should be accompanied by an oral presentation of its main arguments to the class, providing experience in presenting original legal analysis to a critical academic audience.

The class size for legal research and writing courses should be limited to fifteen to twenty students per section, because the course requires intensive individual feedback on written work that cannot be provided effectively in large groups. This is a resource constraint that many Bangladeshi law programs cannot immediately meet, but it is a standard that the accreditation framework should set and that the phased implementation of the National Legal Education Framework should progressively approach.

Section 43.3: Advocacy Training: The Moot Court as Curriculum

The moot court, currently a co-curricular activity for enthusiastic students, should become a compulsory element of the curriculum for all law students. Every student should participate in at least two assessed moot court exercises before graduation: one in the first or second year, based on a relatively straightforward legal problem, and one in the third or fourth year, based on a more complex problem that requires sophisticated research and argumentation.

The educational design of moot court exercises should be more deliberate than the tournament format currently dominant in Bangladesh, which focuses primarily on the competitive dimension. The educational moot court should be designed to develop specific skills in sequence. The preparation phase should develop legal research skills, as students must research the legal issues on both sides of the problem. The argument planning phase should develop analytical skills, as students must identify the strongest available arguments and anticipate counterarguments. The writing phase, if a written skeleton argument is required, should develop legal writing skills. The oral argument phase should develop oral communication skills: organization, clarity, precision, responsiveness to judicial questions, and the ability to maintain a coherent argument under pressure.

The 2025 article on global legal education trends, citing the growing use of AI-powered research and simulation technologies, suggests that virtual moot courts conducted through digital platforms, combined with AI-generated judicial questioning, are beginning to supplement or replace traditional moot courts in some jurisdictions as a way of providing more practice opportunities to more students without the logistical constraints of physical moot court events. For Bangladesh, where access to moot court infrastructure varies enormously across institutions, the development of a national online moot court platform, administered by the National Legal Education Commission, could significantly expand the access of students at less-resourced institutions to quality moot court experience.

Section 43.4: Drafting and Transactional Skills

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Legal drafting, the production of legal documents including contracts, wills, mortgages, agreements, pleadings, and other instruments, is a professional skill of enormous practical importance that is almost entirely absent from the formal curriculum of most Bangladeshi law programs. Every day, practitioners across Bangladesh draft legal documents, and the quality of those documents has direct consequences for the clients who depend on them. A contract that is ambiguously drafted may be interpreted adversely in litigation; a pleading that fails to set out the material facts clearly may be struck out; a will that fails to identify the testator's assets clearly may generate expensive succession disputes. The teaching of drafting is therefore not a peripheral professional nicety but a core professional competency.

A dedicated drafting course should be offered in the third or fourth year of the program, building on the writing skills developed in the first-year legal research and writing course and the substantive knowledge of contract law, property law, and civil procedure developed in the doctrinal curriculum. The course should be structured around a series of drafting exercises of increasing complexity, covering the major document types that practitioners in Bangladesh are called upon to produce: commercial contracts including sale agreements, service agreements, partnership agreements, and loan agreements; property documents including transfer deeds, mortgages, and lease agreements; family law documents including marriage contracts and settlement agreements; and litigation documents including plaints, written statements, applications, and affidavits.

The teaching method for drafting should be workshop-based rather than lecture-based: students should spend class time actually drafting documents and receiving immediate feedback on their drafts from the teacher and from their peers. The evaluation of drafting exercises should be done against specific criteria related to the legal effectiveness, the clarity, the completeness, and the professional presentation of the document, rather than against a general impression of quality. And the course should use real precedents drawn from Bangladeshi practice rather than English or Indian precedents, which may be structured differently and may reflect different legal requirements.

Section 43.5: Negotiation and Alternative Dispute Resolution

Negotiation and alternative dispute resolution (ADR) should be treated as a distinct skills area in the reformed curriculum, reflecting both their enormous practical importance and their pedagogical distinctiveness from other legal skills. The vast majority of legal disputes in Bangladesh, as in every legal system, are resolved through negotiation rather than litigation: parties settle their civil disputes, prosecutors accept guilty pleas, landlords and tenants agree on terms rather than going to court, and commercial partners resolve their disagreements through mediation or arbitration rather than waiting years for judicial resolution. Yet the formal legal curriculum prepares students almost exclusively for the litigation mode of dispute resolution, teaching them how courts work while largely ignoring how negotiations happen, how mediations succeed or fail, and how arbitration proceedings are conducted.

A dedicated ADR course should be offered in the third or fourth year, covering the theory and practice of negotiation, mediation, and arbitration. The theoretical component should engage with the interest-based negotiation theory developed by Roger Fisher and William Ury in Getting

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to Yes, the psychological research on negotiation behavior and its implications for legal practice, and the specific ADR mechanisms available in the Bangladeshi context including shalish, the indigenous village-level mediation mechanism discussed in Part One, the mandatory ADR procedures introduced into civil courts by amendments to the Code of Civil Procedure, and the Bangladesh International Arbitration Centre (BIAC) established in 2011.

The practical component should involve extensive simulation exercises in which students negotiate, mediate, and arbitrate simulated legal disputes. These simulations should be designed by the faculty with the assistance of experienced practitioners who regularly conduct negotiations and ADR proceedings, and they should use factual scenarios drawn from the kinds of disputes that Bangladeshi practitioners most commonly handle: land disputes, commercial contract disputes, family property disputes, employment disputes, and neighbour disputes. The skills developed in these simulations, including the ability to identify interests behind stated positions, to generate creative options for mutual gain, to manage the emotional dimensions of disputes, and to evaluate when settlement is and is not in a client's interest, are skills that cannot be developed through doctrinal lectures and that require the kind of experiential, simulation-based pedagogy that the ADR course can provide.

CHAPTER FORTY-FOUR: JURISPRUDENCE, ETHICS, AND PROFESSIONAL RESPONSIBILITY

Section 44.1: Jurisprudence as the Intellectual Conscience of Legal Education

Jurisprudence, the philosophical study of the nature, purpose, and foundations of law, should be a required subject for every law student in Bangladesh, not an optional elective for those with philosophical inclinations. This position, which may seem extreme to those accustomed to treating jurisprudence as a peripheral academic luxury in a profession-focused curriculum, rests on the straightforward argument that the ability to reason about what law should be is as important to professional legal practice as the ability to reason about what law is. A lawyer who can only tell you what the rules are, but cannot evaluate whether those rules are justified, cannot help clients navigate a legal system that sometimes fails to achieve justice, cannot contribute to the law reform debates that are essential to the improvement of any legal system, and cannot resist the pressure to be merely an instrument of whoever happens to be paying them.

The argument for compulsory jurisprudence is strengthened by the particular circumstances of Bangladesh in 2026. Bangladesh is in the midst of a significant constitutional and legal reform process. The decisions being made about constitutional structure, judicial independence, legislative reform, and institutional design are decisions that require exactly the kind of principled thinking about law's nature and purpose that jurisprudence develops. A legal profession that participates in this reform process without jurisprudential literacy will participate poorly, defaulting to the institutional interests of established practitioners or to uncritical deference to political authority. The reform process needs legally trained participants who can think seriously about what a just and effective legal system looks like and can advocate intelligently for its realization.

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The jurisprudence course should be offered in the second or third year of the program, after students have enough familiarity with doctrinal law to see the jurisprudential questions as genuinely connected to the law they are studying rather than as abstract philosophical exercises. The course should be taught as a seminar, not as a lecture: the material requires genuine discussion and debate rather than the transmission of settled information, because the questions jurisprudence addresses are genuinely contested and because the best jurisprudential education involves students in working through the arguments for themselves rather than learning what the correct answer is.

The content of the jurisprudence course should include the major theoretical traditions introduced briefly in Parts One through Four of this commentary: natural law theory, legal positivism, Dworkinian interpretivism, Critical Legal Studies, feminist legal theory, postcolonial legal theory, and the Islamic jurisprudential tradition. But it should also include material specific to the Bangladeshi context: the jurisprudential debates within the Islamic tradition about the relationship between divine law and positive law, the philosophy of the Bangladesh Constitution as articulated by its framers and subsequently developed by the Supreme Court, and the growing body of scholarship on postcolonial legal theory that addresses directly the circumstances of societies like Bangladesh that are navigating the legacy of colonial law while constructing democratic legal systems of their own.

The 2025 article in the Journal of Interdisciplinary Studies in Society, Law, and Politics, reviewing legal education reform in the Global South from 2020 to 2025, specifically identified critical pedagogy as the most valuable theoretical framework for legal education reform in postcolonial contexts, arguing that legal education in the Global South "remains significantly influenced by colonial legal systems, characterized by formalism, exclusion of local knowledge, and limited accessibility." The jurisprudence curriculum should directly engage with this critique, exploring the ways in which Bangladeshi legal doctrine still reflects colonial assumptions that may no longer serve the interests of a democratic, postcolonial society.

Section 44.2: Legal Ethics: From Rule-Following to Ethical Reasoning

Legal ethics in most Bangladeshi law programs, where it is taught at all, is treated as a subject of rule learning: students study the Bangladesh Bar Council's Canons of Professional Conduct and Etiquette, learn what behavior is prohibited and what is required, and are expected to apply these rules in specific situations. This approach is not without value; the rules of professional conduct are important, and knowing them is a prerequisite for professional practice. But treating ethics as rule-following misses the most important dimension of professional ethical formation.

The deeper goal of legal ethics education is to develop in students the capacity for ethical reasoning: the ability to identify ethical issues in professional situations that are not clearly governed by specific rules, to reason through the competing considerations, to reach a defensible conclusion, and to act on it even under pressure. This capacity cannot be developed by learning rules; it is developed by sustained engagement with ethical problems that require genuine thinking, by exposure to diverse perspectives on those problems, and by reflection on one's own values and the kind of professional one aspires to be.

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The reformed legal ethics curriculum should be delivered through three channels rather than a single course. The first channel is a dedicated course in professional ethics and professional responsibility, offered in the third or fourth year, that systematically covers the major ethical obligations of Bangladeshi advocates, engages with the philosophy of legal ethics including the debates about the adversarial system's moral legitimacy, the proper limits of zealous advocacy, and the duty of lawyers to facilitate access to justice, and addresses contemporary ethical challenges including those raised by technology (the ethical implications of using AI in legal practice), by globalization (the ethical challenges of cross-border legal work), and by the political environment (the ethical responsibilities of lawyers in periods of authoritarian pressure on the rule of law).

The second channel is the integration of ethical issues into doctrinal courses at the points where they arise naturally. Criminal law teaching should engage with the ethics of defending clients the lawyer knows to be guilty. Contract law teaching should engage with the ethics of facilitating contracts that are formally legal but morally problematic. Property law teaching should engage with the ethics of advising clients who are seeking to exploit legal technicalities to deny others their substantive rights. These integrations are most effective when the doctrinal teacher raises the ethical dimension explicitly and invites discussion, rather than treating the ethical question as outside the scope of the doctrinal course.

The third channel is the clinical legal education program, discussed in Part Six, which provides students with direct experience of ethical issues in the context of real or simulated client work. The ethical dimensions of client counseling, the management of conflicts of interest, the obligations of confidentiality, and the duty not to mislead the court are all most powerfully felt and most memorably learned in the context of actual professional work rather than in the abstract.

Section 44.3: Public International Law and Human Rights Law

Public international law and international human rights law should be required subjects in the reformed curriculum, not electives. The argument for this position is twofold. First, international law has become increasingly relevant to Bangladeshi legal practice at every level, not just for the small number of practitioners who specialize in international matters. The international human rights framework bears directly on constitutional litigation in the Supreme Court. International trade law, including the WTO framework and Bangladesh's preferential access agreements, bears directly on the commercial and regulatory advice that practitioners give to businesses. International investment law, including the investor-state dispute settlement framework, is increasingly relevant as Bangladesh seeks to attract foreign investment and as Bangladeshi investors operate in foreign markets.

Second, a legal education that produces lawyers without knowledge of international law produces lawyers who cannot engage meaningfully with the international dimensions of the legal reform debate in which Bangladesh is currently engaged. The recommendations of international human rights treaty bodies, the decisions of international courts and tribunals, and the comparative constitutional law literature that draws on international experience are all inputs to

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the reform process, and a legal profession that is ignorant of these inputs will contribute less effectively to the reform than one that can engage with them knowledgeably.

The international law course should be offered in the second or third year and should cover the foundations of international law including the sources of international law, the subjects of international law, the mechanisms for resolving international disputes, and the relationship between international and domestic law. The international human rights law course should be offered in the third or fourth year and should cover the major international human rights treaties and their implementing mechanisms, the regional human rights systems including the SAARC framework and the developing Asian human rights discourse, the intersection of international human rights law with domestic constitutional law in Bangladesh, and the specific human rights challenges that Bangladesh faces including the rights of garment workers, the rights of minorities including the indigenous peoples of the Chittagong Hill Tracts, the rights of women in the context of personal law and gender-based violence, and the freedom of expression in the context of the Cyber Security Act 2023.

CHAPTER FORTY-FIVE: THE ELECTIVE CURRICULUM AND SPECIALIZATION PATHWAYS

Section 45.1: The Philosophy of Elective Education

The elective curriculum serves a purpose that is distinct from but complementary to the core curriculum. Where the core curriculum develops the foundational knowledge and skills that every law graduate needs regardless of the professional path they eventually follow, the elective curriculum allows students to develop greater depth and specificity in areas that match their particular interests and career aspirations. A student who intends to specialize in corporate and commercial law can use the elective curriculum to develop expertise in company law, banking regulation, securities law, and commercial arbitration. A student who intends to pursue public interest law can use the elective curriculum to develop expertise in human rights law, environmental law, public interest litigation, and social movement lawyering. A student who intends to pursue an academic career can use the elective curriculum to develop research expertise through a dissertation and advanced jurisprudence courses.

The philosophy of the elective curriculum should therefore be one of genuine intellectual breadth and flexibility, not a superficial menu of optional extras that supplements a predetermined path. Students should be genuinely free to choose from a diverse range of elective subjects, with enough variety to accommodate the full range of professional interests that law graduates pursue, and with enough rigor in each elective to provide genuine depth of knowledge rather than a superficial survey.

The governance of the elective curriculum requires an accreditation standard that specifies the minimum range of elective subjects that accredited law programs must offer, without prescribing which specific electives any particular program must offer. The minimum range should cover: commercial and financial law; technology and cyber law; environmental and natural resources

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law; labor and employment law; international law and human rights; land and property development law; family law in greater depth; criminal justice and criminology; and legal theory and jurisprudence in greater depth. Within this range, individual programs should be free to develop distinctive elective offerings that reflect their faculty expertise, their student population's interests, and their location's legal environment.

Section 45.2: Designing Elective Subjects for Depth

The common failure of elective curricula is to design elective subjects as surveys of broad fields rather than as deep engagements with specific questions. A survey course in environmental law that covers everything from the philosophical foundations of environmental ethics to the technical details of pollution control legislation in a single semester cannot develop genuine expertise in any of it. An elective subject that is genuinely educationally valuable must focus on a specific set of questions, develop them in depth through sustained engagement with primary sources and scholarly analysis, and produce students who genuinely know more about those questions at the end of the course than they could have learned by reading an introductory textbook.

The design of elective subjects for Bangladesh's reformed law curriculum should therefore prioritize depth over breadth. An elective in corporate governance should not be a survey of company law, which is covered in the core curriculum, but a deep engagement with the specific questions of corporate governance: the fiduciary duties of directors, the rights of minority shareholders, the accountability of publicly listed companies to their stakeholders, the legal framework for corporate rescue and insolvency, and the governance failures illustrated by Bangladesh's corporate scandals, including those in the garment sector and the banking sector. An elective in constitutional litigation should not be a survey of constitutional law, which is covered in the core curriculum, but a deep engagement with the practice of constitutional litigation: the standing requirements for constitutional petitions, the use of suo motu jurisdiction, the procedures of the constitutional courts, the remedial powers of the courts including structural injunctions, and the major strategic cases in Bangladesh's constitutional history.

Section 45.3: The Research and Dissertation Track

A research and dissertation option should be available within the elective curriculum for students who wish to develop their capacity for original legal scholarship. The research dissertation, a substantial piece of original legal research of 8,000 to 12,000 words, is the most demanding educational experience available in a law program, because it requires the student to develop and pursue their own research agenda rather than responding to a teacher's prompts and questions. The skills it develops, research design, systematic literature review, sustained original argument, and academic writing at a high level, are those required for a career in legal academia, but they are also valuable in a wider range of professional contexts that prize original thinking and sustained analysis.

The research dissertation should be supervised by a faculty member with expertise in the student's chosen area of research, and the supervision should involve regular meetings at which the student presents their progress, discusses their analysis, and receives feedback on drafts. The

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student should be required to submit a research proposal, approved by their supervisor, before beginning the dissertation, and should present their completed dissertation to a small academic panel as part of the assessment process. The process of presenting one's research and responding to questions from knowledgeable critics is itself an important educational experience that develops the oral defense skills required in academic and professional contexts.

The establishment of a student law review journal at each accredited law program, in which exceptional research dissertations are published after peer review, would provide an additional incentive for research quality and would contribute to the development of a legal scholarly culture within the program. The BRAC University Law Review and the Dhaka University Law Journal are existing examples of this model that others could follow and from which the national legal education system as a whole could benefit if there were a systematic framework for coordinating and disseminating the research produced by law students across the country.

CHAPTER FORTY-SIX: THE PEDAGOGY OF REFORMED LEGAL EDUCATION

Section 46.1: Moving Beyond the Lecture

The lecture, as noted in Part Three, remains the dominant pedagogical mode in Bangladeshi legal education, and its dominance is one of the most significant barriers to the development of genuine legal competence in law graduates. This is not because lectures are inherently bad as a teaching method; at their best, lectures by expert and engaging teachers are powerful educational instruments that can illuminate complex material, model analytical thinking, and inspire intellectual curiosity. The problem is that lectures, even at their best, are a passive learning mode for students, and that legal competence requires active learning: the development of skills through practice, the testing of understanding through application, and the refinement of judgment through feedback.

The reformed curriculum should move toward a teaching model in which lectures are used selectively and strategically, for purposes that specifically benefit from the expository format, while other teaching formats are used for the purposes they serve better. Lectures should be used to introduce new concepts and frameworks, to provide the intellectual map within which specific legal material can be located, and to demonstrate analytical approaches to complex questions. But the working through of specific legal problems, the application of principles to facts, the critical evaluation of judicial reasoning, and the development of research and writing skills all require different formats.

The seminar format, in which small groups of students discuss assigned material under the guidance of a teacher who asks questions and manages the discussion rather than delivering prepared content, is the format best suited to developing analytical skills and critical judgment in law. The workshop format, in which students work in small groups on practical exercises and present their work for discussion and critique, is best suited to developing professional skills including research, drafting, negotiation, and advocacy. The clinical format, discussed in Part

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Six, is best suited to developing the full range of professional competencies in the context of real or closely simulated professional work.

The implementation of diversified teaching formats in Bangladeshi law programs faces significant resource constraints. Seminars and workshops require smaller group sizes than lectures, which requires more teaching time per student, which requires either more faculty or a reduction in student numbers, or both. The phased introduction of the National Legal Education Framework should set minimum standards for the proportion of student-teacher contact time that must be in small-group formats, beginning with a relatively modest requirement and increasing it over time as faculty capacity develops. The initial standard might require at least 25% of formal teaching time to be in groups of fewer than twenty students by Year Three of the framework's implementation, increasing to 40% by Year Eight.

Section 46.2: The Socratic Method in the Bangladeshi Context

The Socratic method, described in Part Three as one of the major traditions of legal pedagogy, deserves extended discussion in its application to the Bangladeshi context. The method involves the teacher using targeted questioning to develop students' analytical understanding, pressing them to articulate and defend their interpretations, to identify assumptions, to extend principles to new cases, and to acknowledge the limits of their understanding. At its best, the Socratic method teaches students how to think about law by modeling and then eliciting analytical thinking in a sustained and challenging exchange.

The concerns about the Socratic method identified in Part Three, particularly its tendency to create a classroom culture that benefits confident and analytically prepared students while disadvantaging those who are already uncertain or marginalized, are genuine and must be taken seriously in the Bangladeshi context. Bangladesh's classroom culture is strongly hierarchical: students are not accustomed to being questioned by their teachers, to challenging teachers' statements, or to expressing analytical uncertainty in public. A Socratic method introduced without sensitivity to these cultural dynamics can easily become a ritual of public humiliation that reinforces rather than challenges students' sense of their own intellectual inadequacy.

The modified Socratic method most appropriate for Bangladesh begins with the creation of a classroom culture of intellectual safety: the teacher must establish clearly that questions are invitations to think rather than tests of correct knowledge, that wrong answers are valuable because they identify areas for development rather than occasions for shame, and that intellectual uncertainty is the appropriate and honest starting point for legal analysis rather than a sign of weakness. This culture-building requires explicit effort, particularly at the beginning of a program, and requires the teacher to model intellectual vulnerability by acknowledging the limits of their own knowledge and demonstrating that genuine legal analysis involves wrestling with uncertainty rather than pronouncing correct answers.

Within this safer culture, the modified Socratic method involves the teacher posing analytical questions to the class as a whole before directing them to specific students, allowing students to discuss questions in pairs or small groups before individual responses are invited, and using students' responses as starting points for further collective analysis rather than as subjects for

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individual correction. This modified approach preserves the analytical rigor of the Socratic method while distributing the risk of public exposure across the class rather than concentrating it on individuals.

The 2025 article reviewed for this Part on critical pedagogy in Global South legal education identified the Socratic method's limitations in postcolonial contexts while also recognizing its value in developing analytical thinking, and recommended a dialogic approach in which teachers and students jointly construct legal knowledge through questioning and discussion rather than the teacher unilaterally directing students toward predetermined conclusions. This dialogic approach is consistent with the modified Socratic method described here and with the broader pedagogy of critical legal education that the reform program should aspire to implement.

Section 46.3: Problem-Based Learning in Law

Problem-based learning (PBL), in which the curriculum is organized around complex real-world problems that students must investigate and resolve rather than around disciplinary content to be transmitted, has been extensively used in medical education and is increasingly used in legal education. Its potential value in the Bangladeshi context is significant, because it addresses several of the specific educational failures identified in Part Three simultaneously: it requires active engagement with legal material rather than passive reception; it develops analytical and research skills as necessary components of problem-solving rather than as separate skills exercises; it requires students to integrate knowledge from multiple legal areas in addressing realistic problems; and it develops professional judgment by requiring students to make decisions under conditions of uncertainty.

A fully PBL-based law curriculum, of the kind implemented at some medical schools, is probably not appropriate for Bangladesh at this stage of legal education reform: it requires significant faculty development, small group sizes, and a pedagogical infrastructure that most Bangladeshi law programs do not yet possess. But a partial incorporation of problem-based approaches into the existing curriculum structure is both achievable and valuable. The use of problem-based modules within otherwise lecture-based courses, the structuring of clinical legal education around genuine client problems, the assignment of substantial problem-based research papers as major assessments, and the moot court system all incorporate problem-based elements that develop the relevant competencies without requiring the full implementation of a PBL curriculum.

The January 2024 article in Legal Education published by Taylor and Francis, reporting research on the use of law reform activities as authentic assessment in legal education, found that students who engaged in law reform projects as assessed components of their courses developed both their doctrinal knowledge and their skills in advocacy, research, and critique more effectively than students assessed through traditional examinations alone. For Bangladesh, law reform projects as assessment components could be particularly valuable: students could be asked to analyze a specific area of Bangladeshi law, identify its deficiencies, research comparative approaches to the same legal problem, and produce a reform proposal with supporting arguments. This kind of assignment develops exactly the combination of legal knowledge,

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research skill, and principled argument that the reform of Bangladeshi law requires more of from the legal profession.

Section 46.4: Technology-Enhanced Legal Education

The global trends in legal education technology, documented in the December 2025 report on the future of legal education reviewed for this Part, include AI-powered research tools, virtual reality courtroom simulations, hybrid learning platforms, and digital collaboration tools that are beginning to reshape how legal education is delivered in technologically advanced jurisdictions. Bangladesh is not yet in a position to deploy the most advanced of these technologies systematically across its law programs, but the reform of legal education must engage seriously with the technological trajectory rather than designing a reformed curriculum around the technological infrastructure of today that will be inadequate by the time the curriculum is fully implemented.

The most immediately deployable technology enhancements for Bangladeshi law programs are online legal databases, which are already available and which provide access to primary and secondary legal sources far beyond what any physical library can contain; online video resources including recorded lectures, webinars, and educational videos that allow students to engage with high-quality legal teaching from outside their own institution; and online discussion and collaboration platforms that enable seminar-style discussion between students who cannot physically be in the same room, which is particularly valuable for students at geographically dispersed institutions.

The medium-term technology agenda for Bangladeshi legal education should include the following. First, a national legal research platform, aggregating access to all primary and secondary sources of Bangladeshi law, should be developed and made freely available to all students and faculty at accredited law programs. This platform would address the library resource deficit of many law programs more cost-effectively than the physical library development that traditional accreditation standards focus on, and would provide a level of research access to students at less-resourced regional institutions that physical library development could not achieve within a reasonable timeframe.

Second, virtual moot court platforms, which allow students to practice advocacy skills in a structured simulated environment with AI-generated judicial questioning, should be developed as a supplement to physical moot court events. These platforms allow much more frequent practice than physical moot courts, because they do not require the scheduling, physical preparation, and logistical organization that physical events demand, and they can provide immediate feedback on specific aspects of advocacy performance that human judges are not typically trained to articulate.

Third, AI-assisted legal research tools should be introduced into the legal research curriculum, with specific attention to their use and their limitations. The 2025 report on the future of law school identified AI-powered legal research tools as among the most transformative developments in legal practice, and law students who do not understand how to use these tools will enter a profession that is already using them. But using AI tools uncritically, without

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understanding how they work, where they fail, and how to verify their outputs against primary sources, is a form of professional incompetence. The legal research and writing course should therefore include specific instruction in the use of AI research tools, the evaluation of their outputs, the identification of their errors and biases, and the professional and ethical obligations that govern their use in client matters.

Section 46.5: The Learning Environment: Class Size, Physical Space, and Student Support

The learning environment of a law program is not merely a physical backdrop to educational activity; it is a component of the educational experience that shapes what students learn, how they learn it, and how they understand themselves as learners. The learning environments of most Bangladeshi law programs are poorly designed for the educational purposes they serve: large lecture halls that make any teaching mode other than the traditional lecture physically impractical, inadequate seminar rooms for small-group work, no dedicated clinical spaces for client interviewing and supervision, and library spaces that are inadequately stocked and inadequately staffed.

The reformed accreditation standards should specify minimum requirements for the physical learning environment of accredited law programs. These requirements should include minimum ratios of seminar room capacity to enrolled student numbers, to ensure that small-group teaching is physically possible; minimum library staffing levels, including at least one qualified law librarian for every 500 enrolled students; dedicated clinical spaces including a client interview room, a supervisor observation facility, and a student work space; and a student common room that provides an informal space for discussion and collaboration outside formal teaching settings.

Student support services deserve specific attention, because the complex personal circumstances of many Bangladeshi law students, including financial pressure, family obligations, mental health challenges, and the specific challenges faced by students from disadvantaged backgrounds, can significantly affect their capacity to benefit from even a well-designed curriculum. Accredited law programs should be required to provide adequate pastoral support for students, including access to an academic advisor who meets with each student at least once per semester to discuss their academic progress, access to counseling services or referral to external counseling support for students facing mental health challenges, and specific support for students from disadvantaged backgrounds including mentoring programs, financial support funds, and connections to professional networks.

CHAPTER FORTY-SEVEN: ASSESSMENT DESIGN IN THE REFORMED CURRICULUM

Section 47.1: The Fundamental Principles of Assessment in Legal Education

Assessment is the mechanism by which the educational system signals to students, teachers, and the world what it values, and by which it determines who has and who has not developed the competencies the program is designed to cultivate. The assessment system of the reformed

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curriculum must therefore be designed in close connection with the learning outcomes framework, asking at every point: what evidence does this assessment provide that students have developed the specified outcomes? And it must be designed with awareness of the powerful influence that assessment design exerts on what students study and how they study it, because students are entirely rational in focusing their effort on whatever the assessment rewards.

Five principles should govern the design of assessment in the reformed curriculum. The first is alignment: every assessment element should be designed to assess one or more of the specified learning outcomes, and the set of assessment elements across the program should collectively assess all the specified outcomes. The second is validity: each assessment element should assess what it is designed to assess rather than something else, so that a research and writing assessment actually assesses research and writing ability rather than memory of doctrinal content, and a moot court assessment actually assesses advocacy skill rather than the quality of the student's written notes. The third is reliability: each assessment element should produce consistent judgments across different students and different assessors, achieved through clear marking criteria applied consistently by trained markers. The fourth is transparency: students should know clearly what each assessment is designed to assess, what the marking criteria are, and what a good performance looks like before they produce their work. And the fifth is developmental feedback: every assessment should provide feedback that enables students to understand their current performance and develop their competence, not merely a mark that ranks them relative to other students.

Section 47.2: Replacing the End-of-Year Examination with Diversified Assessment

The end-of-year examination, in which students spend three or four hours writing answers to questions drawn from the year's doctrinal content, is the dominant assessment mode in Bangladeshi legal education. Its dominance reflects several institutional factors: it is administratively straightforward to organize; it provides a clear ranking of students that can be used for progression and classification decisions; and it has a long historical pedigree that lends it cultural legitimacy. But as an instrument of assessment of the learning outcomes specified in the reformed curriculum, it is poor: it assesses primarily the ability to recall and organize legal information under time pressure, which is a very limited component of the competencies that the reformed curriculum aims to develop.

The reformed assessment system should replace exclusive reliance on end-of-year examinations with a diversified portfolio of assessment elements that collectively cover the full range of learning outcomes. For a typical four-year LLB program, the assessment portfolio should include, across the four years: a significant number of problem-based written assessments in which students research and analyze a legal problem and produce a structured answer; several major research papers requiring sustained independent research and original argument; multiple oral assessments including at least two assessed moot court arguments and at least one oral examination or viva on a research paper; practical skills assessments including at least one drafting exercise, one client interviewing exercise, and one negotiation simulation; clinical portfolio assessments from the clinical legal education program; and a dissertation for students who choose the research track.

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Within this portfolio, end-of-year or end-of-semester examinations can have a role, but as one element among several rather than the dominant or exclusive mode. The examination questions in a reformed assessment system should require genuine analysis of specific legal problems rather than description of legal doctrine, using the problem question format that is standard in most common law legal education but largely absent from Bangladeshi examinations. A problem question presents a complex factual scenario and asks students to identify the legal issues, apply the relevant law, and advise the relevant parties. The best answers to problem questions demonstrate exactly the analytical competencies that the reformed curriculum is designed to develop, and the examination can therefore serve as one valid measure of whether those competencies have been developed, as long as it is supplemented by other assessment elements that measure the competencies it cannot assess.

Section 47.3: The Design of Problem Questions

The design of problem questions for legal examinations is a specialized skill that requires both legal expertise and assessment design knowledge. A well-designed problem question should be sufficiently complex to require genuine analysis rather than formulaic application of a single rule; should raise issues that are genuinely uncertain or contested, rather than questions with a single obviously correct answer, so that students must demonstrate reasoning rather than recall; should be grounded in realistic factual scenarios that connect to the kinds of situations practitioners actually encounter; and should be drafted with sufficient precision that the relevant legal issues are determinable, but with sufficient ambiguity on specific facts that students must reason about how factual uncertainty affects the legal analysis.

The development and quality assurance of problem questions for the reformed curriculum should be a faculty responsibility governed by formal processes. Each examination should be developed by the course teacher, reviewed by at least one colleague who has not taught the course, and approved by the department's assessment committee before use. The marking criteria for each question should specify the legal issues that an adequate, good, and excellent answer would identify and how they would be analyzed, and these criteria should be shared with all markers before marking begins to ensure consistency.

The introduction of external examiners, drawn from other law programs or from the practicing profession, to review a sample of marked scripts and provide feedback on marking standards, is a quality assurance mechanism used in UK and Australian law programs that Bangladesh's reformed accreditation framework should require. External examiners provide an important check on whether internal standards are consistent with standards elsewhere in the system and with the expectations of professional practice, and their reports are a valuable source of information for curriculum and assessment development.

Section 47.4: Feedback as a Teaching Tool

The feedback function of assessment is as important as its evaluative function, but it is almost entirely undeveloped in current Bangladeshi legal education practice. Students receive marks for their examinations but rarely receive the detailed, specific feedback on their performance that would enable them to understand why they received those marks and how they could improve.

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This is partly a resource issue: providing detailed feedback on hundreds of examination scripts is time-consuming, and law faculties that are already stretched in their teaching responsibilities may not have the time to do it. But it is also a cultural issue: the feedback function of assessment has not been a priority in Bangladeshi legal education, and developing it requires a shift in how assessment is understood and valued.

The reformed curriculum should require that every major assessed piece of work be accompanied by written feedback of at least 200 words that specifically addresses the strengths and weaknesses of the student's performance by reference to the specified learning outcomes and marking criteria. This feedback should be provided within three weeks of submission for coursework assessments and within four weeks of the examination period for examination-based assessments. Students should have a formal right to discuss their feedback with the marking teacher, to ask questions about specific comments, and to understand how the feedback relates to the marking criteria.

The development of a culture of developmental feedback requires investment in the training of law faculty in feedback provision. Most law teachers were not taught how to give developmental feedback when they were students, and many have not received training in it as teachers. The faculty development program discussed in Chapter Forty-Nine should include specific training in feedback design and delivery as a core component, drawing on the educational literature on effective feedback in higher education.

Section 47.5: Assessment of Clinical Competencies

The assessment of clinical competencies, developed through the clinical legal education program, presents distinctive challenges that require specific assessment methods. Clinical competencies, including client interviewing, legal analysis and advice, drafting, negotiation, and advocacy, cannot be adequately assessed through written examinations alone. They require performance-based assessments in which students demonstrate the competency in practice, under the observation of trained assessors who evaluate the quality of the performance against specified criteria.

The major performance-based assessments in the clinical legal education program should include: a structured client interview, in which students conduct an interview with a real or simulated client under supervisor observation, assessed against criteria for empathy, information gathering, legal analysis, and client communication; a clinical portfolio that documents the student's clinical work over the program and reflects on their development as a practitioner; a drafting portfolio that collects the legal documents the student has drafted during the clinical program; a clinical oral examination in which students reflect on specific aspects of their clinical experience and discuss the legal and ethical issues they encountered; and a peer assessment exercise in which students evaluate each other's performance in simulated professional situations and receive peer feedback on their own performance.

The integration of peer assessment into the clinical assessment framework serves both evaluative and developmental purposes. Research on peer assessment in professional education consistently shows that the process of assessing a peer's work develops the assessor's understanding of the

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relevant standards and criteria, as well as providing useful feedback to the person assessed. For clinical legal education, where the professional standards being developed are partly intersubjective, in the sense that they depend on how one's professional performance is received by others, peer assessment provides a dimension of evaluation that supervisor assessment alone cannot provide.

CHAPTER FORTY-EIGHT: THE SPECIALIZATION FRAMEWORK AND PROFESSIONAL DOCTORATE

Section 48.1: From Generalism to Specialization: The Developmental Argument

The reformed LLB curriculum described in the preceding chapters is designed to produce graduates who are competent generalists: lawyers who have a thorough understanding of the foundational areas of law, who can research and analyze any area of law they encounter, who can communicate legal advice effectively in writing and orally, and who have developed a strong ethical foundation for professional practice. This generalist foundation is appropriate for an initial professional degree, because the practice contexts into which graduates move are so diverse that a curriculum narrowly focused on any particular area of practice would equip graduates for that practice while leaving them inadequately prepared for others.

But the legal profession increasingly values specialization alongside generalism, and the professional development system needs to accommodate both. As Part Seven of this textbook will address in full detail, the legal needs of a complex modern economy require lawyers with deep expertise in specific areas: intellectual property lawyers who understand both law and technology well enough to advise effectively on patent disputes and licensing arrangements; environmental lawyers who understand both the legal framework and the scientific dimensions of environmental problems; commercial arbitration lawyers who understand both the substantive law of commercial contracts and the procedural framework of international arbitration. These specialists cannot be produced by a four-year generalist LLB alone; they must be developed through postgraduate education and sustained professional practice in their area of expertise.

The specialization framework proposed in this commentary therefore operates at two levels. The first level is the elective curriculum of the reformed LLB, which allows students to begin developing specialization during their undergraduate program by choosing elective subjects in areas of particular interest. The second level is the postgraduate and continuing professional development framework, which provides accredited pathways for practicing lawyers to develop recognized specialist expertise through a combination of advanced education and supervised practice.

Section 48.2: The Professional Doctorate in Law: Principles

The professional doctoral degree in law, which will be the primary subject of Part Eight of this textbook, represents the highest level of formal legal education for practicing lawyers. The SJD (Doctor of Juridical Science) in the American tradition, the LLD (Doctor of Laws) in the

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Australian and South African traditions, and the equivalent programs that are emerging in South and Southeast Asian legal education systems all represent attempts to develop a doctoral-level qualification that is grounded in practice experience and oriented toward the development of expertise and leadership in specific areas of law and legal practice.

The professional doctoral degree in law differs from the academic research doctorate in its primary audience, its educational purposes, and its assessment design. The academic research doctorate, represented by the PhD in Law, is designed for scholars who will make original contributions to legal scholarship through research and publication. The professional doctoral degree is designed for experienced practitioners who wish to develop the highest level of expertise in their area of practice, to contribute to the development of the law and legal practice in that area, and to qualify for leadership roles in the profession, the judiciary, and public service.

The design of the professional doctoral degree in law for Bangladesh should reflect the specific characteristics of the Bangladeshi legal system and the most pressing leadership needs of the Bangladeshi legal profession. Bangladesh needs leaders in constitutional law who can navigate the complex reform process currently underway, leaders in commercial and investment law who can represent Bangladesh effectively in international forums, leaders in human rights law who can develop the jurisprudence of fundamental rights in the reformed constitutional framework, and leaders in specialized areas including environmental law, technology law, and labor law who can develop and implement the legal frameworks these areas require.

CHAPTER FORTY-NINE: THE FACULTY DEVELOPMENT STRATEGY

Section 49.1: The Faculty Development Crisis and its Roots

The reformed curriculum described in this Part cannot be implemented by the current faculty of most Bangladeshi law programs without significant development. Many of the pedagogical approaches advocated here, including the modified Socratic method, problem-based learning, clinical legal education, and outcomes-based assessment with developmental feedback, are unfamiliar to faculty who were educated in and have taught within the traditional lecture-and-memorization system. The new elective subjects, including technology law, environmental law, and international human rights law, require specific expertise that many current faculty do not possess. And the research and scholarly engagement that a quality law faculty must maintain requires institutional support and protected time that most Bangladeshi law programs currently do not provide.

The faculty development crisis in Bangladeshi legal education has three distinct dimensions. The first is the qualifications dimension: a very large proportion of law faculty in Bangladesh, particularly at the National University college level, do not hold doctoral qualifications and have not been trained in legal research methods or scholarly publication. This is not their fault; the doctoral training opportunities available to Bangladeshi legal academics in Bangladesh are very limited, and many who would pursue doctoral study do not have the financial resources or the institutional support to do so. The second is the pedagogical dimension: even faculty who are

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well-qualified in terms of legal knowledge have generally not received training in how to teach law effectively, how to design valid and reliable assessments, or how to provide developmental feedback. The third is the scholarly dimension: even faculty who are well-qualified and who have received some pedagogical training generally lack the institutional environment, the protected research time, the library resources, and the scholarly community needed to sustain an active research program alongside their teaching responsibilities.

Section 49.2: The National Faculty Development Program

The National Legal Education Framework should include a National Faculty Development Program, administered by the National Legal Education Commission and funded through the Legal Education Development Fund, that provides systematic support for the professional development of law faculty across the country. The program should operate at three levels, corresponding to the three dimensions of the faculty development crisis identified in Section 49.1.

At the first level, the qualifications development program should provide funding and institutional support for law faculty to pursue doctoral study. This support should include: competitive doctoral scholarships for full-time study, available to faculty from all accredited law programs; a research leave entitlement that guarantees doctoral students one to two years of protected research time while maintaining their employment and salary; a mentoring program that pairs doctoral students with experienced supervisors from the leading law programs and, where relevant, from international institutions; and a doctoral colloquium, organized annually by the National Legal Education Commission, at which doctoral students present their work and receive feedback from peers and senior scholars.

The development of doctoral programs at the leading Bangladeshi law programs is an essential component of this level of the faculty development strategy. The University of Dhaka's Faculty of Law, Rajshahi University's Faculty of Law, and the NLUB once established, should develop accredited LLD or SJD research programs that can absorb the most capable doctoral candidates from across the country. These programs should maintain strict academic standards and should be subject to external review to ensure their quality. The aspiration should be that within twenty years, the majority of law faculty at accredited Bangladesh law programs hold doctoral qualifications from recognized research universities, with a significant proportion of these qualifications from international institutions.

At the second level, the pedagogical development program should provide systematic training in legal teaching and assessment for all current and newly appointed law faculty. This training should be delivered through a combination of short intensive workshops, online modules, and longer certified programs that develop specific teaching competencies. The mandatory elements should include: a foundational module on legal pedagogy covering the major teaching methods, their theoretical foundations, and their appropriate use; a module on outcomes-based assessment design, marking criteria development, and feedback provision; a module on clinical legal education, including the supervision of clinical work and the assessment of clinical competencies; and a module on teaching with technology, covering the use of online resources, digital collaboration tools, and AI research tools in legal education.

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At the third level, the scholarly development program should provide institutional support for law faculty to engage in research and publication. The most important element of this support is protected research time: no law faculty member at an accredited program should be expected to teach more than twelve credit hours per semester and should have at least one semester per three years of full research leave. The development of research culture in law faculties also requires support for attendance at academic conferences, access to institutional funding for research projects, and involvement in the peer review processes of legal journals. The National Legal Education Commission should establish a research grant program specifically for law faculty, providing small grants for individual research projects and larger grants for collaborative research projects that address the most significant questions of Bangladeshi law and legal reform.

Section 49.3: Recruiting and Retaining Academic Talent

The faculty development strategy must include a strategy for recruiting and retaining the most academically talented individuals in law faculty positions. This is currently one of the most difficult challenges in Bangladeshi legal education, because the most capable law graduates have many more attractive career options than law academia: a career in private legal practice, in the judiciary, in NGOs and civil society, or in international organizations all offer considerably higher incomes and often greater professional prestige than a career in law teaching. The salary structure of Bangladeshi law academia, particularly in the public university sector, is simply not competitive with these alternatives for the most talented individuals.

There are several elements of a talent recruitment and retention strategy that do not require large increases in academic salaries alone. First, the creation of clear and merit-based career pathways, in which promotion from lecturer to assistant professor to associate professor to professor is governed by transparent criteria related to teaching quality, research output, and service to the profession, provides an incentive for investment in professional development that the current opaque and often politically influenced promotion system does not. Second, the development of genuine academic freedom, including the freedom to research and publish on legally and politically sensitive topics without institutional retaliation, makes law academia more attractive to scholars who value intellectual independence.

Third, the development of a genuine scholarly community, through regular academic seminars, visiting scholar programs, and participation in international academic networks, makes law academia more intellectually stimulating and professionally rewarding. A law faculty at which serious research is happening, where visiting scholars from abroad come to present their work, and where faculty members are active participants in national and international legal education networks is a much more attractive professional environment than one where teaching loads are heavy, scholarly expectations are minimal, and intellectual life is dormant.

Fourth, the targeted recruitment of members of the Bangladeshi legal academic diaspora, those Bangladeshi legal scholars who are currently at institutions in the UK, the US, Australia, Canada, or elsewhere, through programs that make returning to Bangladesh professionally attractive, can bring a level of scholarly experience and international connection that would take decades to develop domestically. The NLUB should be specifically designed to attract diaspora scholars,

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offering competitive salaries, excellent working conditions, and the intellectual excitement of building a flagship institution from the ground up.

CHAPTER FIFTY: THE IMPLEMENTATION PATHWAY

Section 50.1: The Short Term: Immediate Steps and Quick Wins

The implementation of the comprehensive curriculum reform proposed in this Part cannot happen at once, and a phased strategy is both practically necessary and politically wise. But the phasing should not become an excuse for indefinite delay: there are immediate steps that can and should be taken within the first two years of the reform program, steps that produce genuine improvements without requiring the full institutional infrastructure of the reformed framework.

The most important immediate step is the reform of assessment in public university law programs. The shift from end-of-year examinations based on essay and short-answer questions to problem-based questions that require genuine analysis can be initiated within any law program by faculty who are committed to the change, without waiting for national accreditation framework reforms. Similarly, the introduction of at least one major research paper as a required assessment component in the third or fourth year of each law program can be implemented immediately at institutions whose faculty are willing to supervise and mark such work. These assessment reforms will, within a few years, begin to change the culture of study: students who know their examinations require analysis rather than memorization will invest in developing analytical skills.

The second immediate step is the development of legal research infrastructure. The creation or improvement of access to online legal databases, the cataloging and organization of existing library holdings, and the appointment of at least one qualified law librarian at institutions that lack one are all investments that can begin immediately and that have immediate returns in the quality of student research. The national legal research platform, which would ultimately provide comprehensive access to all primary and secondary sources of Bangladeshi law to all students and faculty at accredited programs, should be commissioned as an immediate project with a target of basic functionality within three years.

The third immediate step is the development of clinical legal education at institutions that do not yet have it. Even without the full national clinical legal education framework proposed in Part Six, individual law programs can begin establishing clinical programs in partnerships with local courts, legal aid organizations, and NGOs. The University of Dhaka's Faculty of Law, BRAC University, and a small number of other institutions already have clinical programs; the expansion of these programs and the development of new ones at institutions where they do not yet exist should begin immediately, supported by the legal education development fund once it is established.

Section 50.2: The Medium Term: Institutional Building

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The medium-term phase, covering Years Three through Six of the reform program, involves the construction of the institutional infrastructure required for the reformed curriculum to be implemented systematically rather than as a collection of individual initiatives. This phase involves the formal establishment of the National Legal Education Commission, the development and adoption of the National Legal Education Framework, the operationalization of the accreditation system for law programs, and the full implementation of the National Faculty Development Program.

The accreditation system, once operational, will create the external quality assurance pressure that is currently absent from most Bangladeshi law programs. Programs will need to demonstrate compliance with the new standards for curriculum content, teaching quality, assessment design, library resources, faculty qualifications, and student support in order to retain their accredited status and thus their ability to award degrees recognized for Bar Council enrollment. This external pressure, applied consistently and rigorously, is the most powerful instrument available for driving improvement in programs that have strong financial incentives to resist change.

The national law review journal system should be established in the medium term, with a national law review publishing the best scholarship produced by law faculty and doctoral students at accredited programs, and with institutional law reviews at each accredited program providing a venue for the work of both faculty and students. The national law review should aspire to become the leading academic legal journal in Bangladesh, publishing work of the quality that engages with the best international legal scholarship while remaining focused on the specific legal questions of Bangladeshi society.

Section 50.3: The Long Term: Cultural Transformation

The deepest reform required is not institutional but cultural: a shift in the culture of Bangladeshi legal education from one that values coverage, conformity, and the transmission of settled doctrine to one that values depth, critical engagement, and the development of genuine competence. Cultural transformation in educational institutions is the work of decades, not years, and it requires sustained effort at multiple levels simultaneously: in the classroom, in the selection and development of faculty, in the design of assessments, in the culture of scholarly life, and in the relationship between the academy and the profession.

The most powerful driver of cultural transformation in legal education is the quality of the students who experience it and the lawyers they become. When enough law graduates have been through a genuinely reformed legal education, experienced its intellectual quality, and demonstrated in their professional practice the difference that quality makes, they will become advocates within the profession for maintaining and improving those standards. The reformed curriculum will produce its best argument for itself in the quality of the lawyers it produces.

The relationship between the legal academy and the legal profession is crucial to this cultural transformation. Academics who engage seriously with the intellectual questions of legal practice, who participate in continuing professional development programs for practicing lawyers, who contribute to law reform commissions and policy debates, and who maintain collegial relationships with the judiciary and the bar are far more influential in the legal culture than those

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who remain entirely within the academy. Building these relationships requires deliberate institutional effort, including the development of joint programs between law schools and the Bar Council, the involvement of practitioners in curriculum design and assessment, and the creation of forums in which academics and practitioners engage seriously with each other's work.

CONCLUDING SYNTHESIS OF PART FIVE: THE REFORMED CURRICULUM AS AN INSTRUMENT OF DEMOCRATIC RENEWAL

The argument of Part Five has been that the reform of the curriculum of legal education in Bangladesh is not a technical adjustment to an existing system but a transformation of the educational project that produces the country's legal professionals. The transformation required is from a system that transmits legal rules to one that develops legal professionals, from a system that measures the retention of information to one that assesses the development of competence, from a system that teaches black-letter law in isolation from its social context to one that teaches law as a principled response to the needs of a democratic society.

This transformation is simultaneously an educational project and a democratic project. The kind of lawyers that Bangladesh needs in 2026 and beyond, as the country navigates its reform process and builds the institutional foundations of a more genuinely democratic state, are lawyers who can think independently and critically, who are genuinely committed to justice and the rule of law rather than merely to the service of whoever pays them, who understand the constitutional framework of their society and take it seriously as a guide to their professional conduct, and who have the analytical sophistication to contribute to the legal reform debates that the moment demands. A legal education that produces graduates with these qualities is a contribution to democratic renewal as significant as any constitutional amendment.

The reforms proposed in this Part are ambitious but not utopian. They are modeled on practices that have been successfully implemented in comparable legal systems across Asia, Africa, Europe, and the Americas. They are grounded in evidence about what kinds of legal education actually produce competent and ethical lawyers. They are responsive to the specific conditions of Bangladesh, including its colonial legal heritage, its legal pluralism, its democratic aspirations, and the institutional constraints of its educational system. And they are proposed with full awareness that implementation will require sustained effort, significant resources, and the committed leadership of faculty, students, administrators, and practitioners who care about the quality of the legal profession and about the contribution that profession makes to Bangladeshi society.

The curriculum is the heart of legal education. Getting it right is essential not only for the quality of the legal profession but for the quality of democratic governance, for the accessibility of justice, and for the realization of the constitutional aspirations that the people of Bangladesh have struggled through generations to achieve. Part Six will address the other dimension of that realization: the clinical legal education and access to justice program through which law schools serve the immediate legal needs of the communities they are part of while simultaneously developing the professional competence of their students.

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BIBLIOGRAPHICAL NOTES AND REFERENCES FOR PART FIVE

The primary recent source for the critical pedagogy analysis in this Part is the 2025 article in the Journal of Interdisciplinary Studies in Society, Law, and Politics, reviewing legal education reform in the Global South from 2020 to 2025. The article's conclusion that legal education in postcolonial contexts remains significantly shaped by colonial formalism and its recommendation of critical and dialogic pedagogy as the primary reform approach provides the theoretical backdrop for the pedagogical proposals in Chapter Forty-Six.

The December 2025 study in the Lead City University Law Journal, by Okpara, Okpara, and Okunadu, reviewing clinical legal education, pro bono models, and experiential learning in legal education, confirms the global consensus that experiential and simulation-based learning are the most effective approaches to developing professional legal competence and provides the most recent comparative assessment of these methods.

The 2024 article in the Asian Journal of Legal Education by Pandey, Moti, and Naomi, Educating for Social Justice Lawyering and Community Legal Empowerment: Learnings from India and Bangladesh, published by SSRN in January 2025 after online publication in November 2024, provides the most directly relevant comparative analysis of clinical legal education in the Bangladeshi context. Its three recommendations, improving institutional support for clinical programs, securing sustainable funding, and requiring regulators to bridge the gap between academia and practice, inform the specific proposals in Chapter Forty-Three and the clinical legal education chapter that follows.

The January 2025 SSRN publication by Jane Schukoske, Advancing the Sustainable Development Goals in Bangladesh through the Whole of Society Approach: Clinical Legal Education and Community Participation, published as a chapter in the 2024 edited volume Law, Human Rights and Legal Education, provides an important perspective on the social justice dimensions of clinical legal education in Bangladesh, examining the work of Professor Mizanur Rahman in developing community-engaged legal education methods that could be incorporated into formal curricula.

The 2024 publication by Sharma and Kumari in the Asian Journal of Legal Education, Role of Legal Education in Advancement of Access to Justice, provides comparative evidence from India on the role of law school clinics in advancing access to justice and supports the access to justice arguments made throughout this Part.

The January 2024 article in Legal Education by Taylor and Francis, Law as it is and how it could be: Law reform participation as authentic assessment and a pedagogical tool, provides experimental evidence for the educational value of law reform activities as a pedagogical method that develops both doctrinal knowledge and professional skills simultaneously.

The 2025 analysis of future trends in legal education from Shoolini University and LawCrossing document the specific technology trends that are reshaping legal education globally, including

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the integration of AI, VR simulations, and hybrid learning platforms that the reformed Bangladeshi curriculum must engage with in the medium term.

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END OF PART FIVE

Part Six will develop the clinical legal education and access to justice proposal in full institutional detail, covering the design philosophy of law school clinics, the full spectrum from in-house client clinics to external placement programs to simulation-based clinical education; the community legal education center network; the funding framework for sustainable clinical legal education; the assessment of clinical competencies in greater technical detail than Part Five's overview provides; the relationship between clinical legal education and the legal aid system of Bangladesh; the human rights dimensions of clinical education; the jurisprudential foundations of the social justice lawyering tradition; and the specific institutional designs required to establish clinical legal education as a genuine component of the Bangladeshi legal education system rather than an occasional aspiration.

Part Seven will develop the specialist accreditation framework in full, covering the design and governance of specialist certification systems in commercial law, human rights law, criminal law, family law, environmental law, labor law, and other specialized fields; the relationship between specialist accreditation and continuing professional development; the role of specialist

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certification in developing the quality of specific areas of Bangladeshi legal practice; and the international dimensions of specialist recognition.

Part Eight will develop the professional doctoral program for law in full detail, covering the design of the SJD or LLD program suitable for the Bangladeshi context, the admissions process, the curriculum, the supervision framework, the assessment including the dissertation and the oral defense, the relationship between the professional doctoral program and the broader goals of leadership development for the Bangladeshi legal profession, and the governance of doctoral programs at the leading law schools.

Parts Nine through Twelve will address: personal law and its reform in depth; the International Crimes Tribunal and transitional justice; the court system, case backlog, and the procedural reform agenda; and the future of Bangladesh's legal system in the global legal order.

PART SIX: CLINICAL LEGAL EDUCATION, ACCESS TO JUSTICE, AND THE SOCIAL MISSION OF THE LAW SCHOOL

Commentary on the Legal System of Bangladesh, Bar Council, and Necessary Reforms

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PREFACE TO PART SIX

Part Five closed with a promise that Part Six would address the dimension of legal education most directly connected to the lives of those who are not lawyers: the clinical legal education program through which law schools serve real communities with real legal needs while simultaneously developing the professional competence of their students. That promise must now be fulfilled, and fulfilling it requires engaging with what is at once the most philosophically demanding and the most practically urgent dimension of the reform agenda.

The access to justice crisis in Bangladesh is not an abstraction. It is measured in the lives of people who cannot afford a lawyer, who do not know their rights, who live under threat of eviction from land they have farmed for generations without formal documentation of title, who have been assaulted or cheated or discriminated against without any realistic prospect of legal remedy, and who have therefore learned that the formal legal system is not for them. The 2025 article in the International Journal of the Legal Profession, published after online review in early 2025, described the Bangladeshi legal aid system as a "paradox," an institution whose design and performance are so inadequate to the scale of unmet legal need that it simultaneously exposes the problem and demonstrates the state's incapacity or unwillingness to solve it. The UNDP's 2024 report on access to justice in Bangladesh noted that over 300,000 individuals gained access to justice through UNDP-supported ADR mechanisms by 2023, a figure that sounds impressive until it is set against the tens of millions who remained without access. The case backlog documented in the December 2024 academic paper stood at over 3.4 million cases pending in Bangladesh's courts, a number that has been growing for years and that represents the

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accumulated justice deficit of a society whose formal legal infrastructure has chronically failed to meet the needs of its population.

The clinical legal education program proposed in this Part is not a solution to the access to justice crisis by itself; no educational program can be. The crisis requires structural solutions: a reformed legal profession, a more efficient court system, a more adequately funded legal aid system, and a more genuinely rights-conscious public culture. But clinical legal education is a necessary component of the broader reform effort. It provides direct legal services to those who otherwise have none. It develops in law students a genuine understanding of the access to justice problem and a sense of professional responsibility for addressing it. And it produces lawyers who have experienced the difference between law as doctrine and law as it operates in the lives of real people, and who carry that experiential knowledge into their professional careers.

Part Six proceeds through a series of sustained analytical chapters that address: the philosophical and jurisprudential foundations of clinical legal education; the global history and current state of clinical legal education; the specific access to justice landscape of Bangladesh, including the formal legal aid system, the informal dispute resolution ecosystem, and the role of NGOs; the design of in-house law school clinics; the design of external placement and externship programs; the design of simulation-based clinical education; the assessment of clinical competencies; the governance and funding framework; and the integration of clinical legal education with the broader legal reform agenda.

CHAPTER FIFTY-ONE: THE PHILOSOPHY OF CLINICAL LEGAL EDUCATION

Section 51.1: Justice as the Ultimate Purpose of Legal Education

The question of what legal education is ultimately for has been answered in various ways throughout the history of this textbook series. Part One emphasized the jurisprudential foundations of law and the importance of understanding law within its civilizational and philosophical context. Parts Three through Five emphasized the professional formation function: producing lawyers who are competent, ethical, and analytically sophisticated. Part Six insists on a dimension that cannot be absorbed into either of these accounts without distortion: the justice-seeking function. Legal education exists, ultimately, because law exists, and law exists, ultimately, because human societies need a principled mechanism for the resolution of disputes, the protection of rights, and the organization of collective life in accordance with values of fairness, dignity, and equal concern for all. A legal education that produces technically skilled lawyers who serve their clients effectively but who have no felt connection to the justice dimension of that service, who cannot distinguish between the exercise of technical skill in the service of justice and in the service of injustice, has failed its most fundamental purpose.

This is not a marginal or radical position. It is the position of the most thoughtful scholars of legal education across the ideological spectrum. William Sullivan's Carnegie Report, the most influential analysis of American legal education in the past two decades, argued that the best law schools produce graduates who have developed not only the cognitive skills of legal analysis but

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what Sullivan called "practical wisdom," a form of judgment that integrates technical competence with ethical sensitivity and civic responsibility. Frank Bloch's global survey of clinical legal education, published in 2011 and still the definitive comparative treatment of the field, identified the commitment to social justice as the animating principle of clinical legal education worldwide, distinguishing genuine clinical programs from mere vocational training exercises. And the November 2024 article in the Asian Journal of Legal Education by Pandey, Moti, and Naomi, specifically comparing the clinical legal education landscape of India and Bangladesh, concluded that the failure of both countries to develop adequate clinical programs has directly contributed to their access to justice crises, and that genuine clinical programs with a social justice orientation are among the most cost-effective interventions available for expanding access to justice.

The philosophical case for clinical legal education as the embodiment of the justice-seeking function of law rests on three connected arguments. The first is pedagogical: clinical education is not merely a more engaging way of teaching what could be taught in a classroom; it is the only way of developing certain dimensions of professional competence, including the capacity for empathetic client relationship, the judgment required to navigate genuine uncertainty without the safety net of a known answer, and the moral seriousness that comes from understanding that one's professional work has real consequences for real people. The second is democratic: a legal education system that does not expose students to the full range of legal needs in their society, confining itself to the kinds of legal problems that wealthy clients bring to well-resourced firms, is producing a professional class with a systematically distorted understanding of what law does and for whom. The third is institutional: law schools that serve their communities through legal services programs develop the kind of public legitimacy and social connection that makes them genuine institutions of civil society rather than mere credentialing factories.

Section 51.2: The Theoretical Traditions: From Legal Realism to the Global Clinical Movement

Clinical legal education as a deliberate educational practice emerged from the Legal Realist movement in the United States in the first decades of the twentieth century. The Legal Realists, including Jerome Frank, Karl Llewellyn, and Felix Cohen, argued that law as it appeared in the law reports was a fiction, a sanitized account of judicial reasoning that concealed the role of social, economic, and psychological factors in actually determining legal outcomes. Their prescription for legal education was an encounter with law as it actually operates in the courts, in the offices of practicing lawyers, and in the daily lives of people whose rights are at stake. Jerome Frank's 1933 essay "Why Not a Clinical Lawyer School?" is usually cited as the founding manifesto of clinical legal education, arguing that law schools should adopt the medical school model of clinical training, in which students develop professional judgment by working with real patients, in law schools' case real clients, under expert supervision.

The subsequent development of clinical legal education in the United States was shaped significantly by the civil rights movement and the War on Poverty of the 1960s, which created both a moral imperative to serve poor communities and an institutional mechanism for doing so through federally funded legal services programs. Law schools in this period began establishing clinical programs in connection with legal services offices that provided representation to poor

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clients, producing a model of clinical education that simultaneously served social justice and educational purposes. This "dual mission" model, in which clinical programs serve both an educational function for students and a service function for the communities they operate in, has remained the dominant paradigm of clinical legal education globally, and it is the model most appropriate for Bangladesh.

The global clinical movement, documented in Bloch's 2011 volume, reached South Asia primarily through the Indian National Law University system. The National Law School of India University in Bangalore, established in 1987 under the leadership of N.R. Madhava Menon, incorporated clinical legal education as a central component of its five-year integrated program from the beginning, establishing legal aid clinics that provided real services to communities in Bangalore's economically marginalized areas. The subsequent development of clinical programs at NALSAR University of Law in Hyderabad, at the West Bengal National University of Juridical Sciences in Kolkata, and at the other National Law Universities has created the most extensive and varied clinical legal education infrastructure in South Asia.

Bangladesh has been a participant in this global movement, but a very marginal one. The work of Professor Mizanur Rahman at various institutions, documented in the January 2025 SSRN publication by Jane Schukoske, represents the most sustained individual effort to develop community-engaged legal education in Bangladesh, creating programs that expose students to human rights principles through direct community engagement. BRAC University's clinical program is the most institutionally developed, with a legal aid clinic that provides genuine services to clients in Dhaka. But across the broader legal education system, clinical legal education remains the exception rather than the rule, and the infrastructure for systematic clinical education at scale does not yet exist.

Section 51.3: Habermas, Communicative Action, and the Clinic as Democratic Space

Jurgen Habermas's theory of communicative action, developed in The Theory of Communicative Action published in 1984 and elaborated in subsequent works including Between Facts and Norms, offers a theoretical framework for understanding the special significance of clinical legal education in a democratic society. Habermas distinguishes between strategic action, in which actors pursue their goals by influencing the behavior of others through power or instrumental calculation, and communicative action, in which actors seek mutual understanding through rational discourse governed by norms of sincerity, truth, and normative rightness. Democratic legitimacy, on Habermas's account, depends on institutions and practices that embody communicative rather than strategic action: institutions in which citizens can participate as genuine equals in the determination of the rules that govern their common life.

The clinical legal education program, properly designed, is one of the institutional spaces in which the gap between the strategic action of the powerful and the communicative ideals of democratic life can be partially bridged. When a law student sits with a client from a marginalized community, listens with genuine attention to that client's account of their legal problem, and works to understand the situation from the client's perspective rather than imposing a predetermined legal category, the student is engaging in something closer to communicative action than to the strategic deployment of technical expertise. The client is not merely an object

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of professional intervention but a person with a perspective, a story, and rights that the legal system is obligated to take seriously. The clinic, at its best, embodies the democratic principle that every person's legal interests deserve equal concern, not only the interests of those who can pay for sophisticated representation.

This Habermasian analysis also illuminates the pathologies of clinical legal education when it fails to embody communicative ideals. A clinical program that treats clients as case studies rather than as persons, that processes legal problems through bureaucratic routines without genuine engagement with the specific circumstances of each client, or that imposes middle-class legal values on clients from different cultural backgrounds, reproduces the strategic action of the dominant legal culture rather than offering an alternative to it. The quality of the client relationship, and the genuineness of the student's engagement with the client's perspective, are therefore not peripheral features of clinical education but central to its educational and democratic significance.

Section 51.4: The Capabilities Approach and Access to Justice

Amartya Sen's capabilities approach, introduced in Part Three in relation to admissions equity, has a second and equally important application in the context of clinical legal education and access to justice. Sen argues that justice requires attention to what people are actually able to do and be, their real freedoms and opportunities, rather than to the formal entitlements they are assigned on paper. Applied to legal rights, this means that the existence of a formal legal right, including the constitutional rights enshrined in the 1972 Constitution of Bangladesh, is insufficient for justice unless the right-holder has the practical capability of asserting and enforcing that right when it is violated.

The gap between formal legal rights and practical legal capabilities is enormous in Bangladesh. The poor, the rural, the less educated, and the socially marginalized all face structural barriers to the exercise of their formal legal rights. They may not know what their rights are. They may not know how to access the legal system. They may not be able to afford a lawyer. They may face intimidation from more powerful parties. They may live too far from a court to participate in litigation. And even when they do manage to enter the formal legal system, they may find it organized around the norms and expectations of a social class very different from their own, inaccessible in its language and procedures, and systematically biased by the advantages that money and social connection provide.

Clinical legal education, on the capabilities approach, is an instrument for expanding the practical legal capabilities of those whose formal legal rights are rendered ineffective by structural barriers. A legal aid clinic that provides free legal services to those who cannot afford a lawyer is directly expanding the practical capability to assert legal rights. A community legal education program that teaches community members about their rights, the legal processes relevant to their lives, and how to access legal assistance is expanding the practical capability of legal knowledge. A paralegal training program that equips community members with the skills to navigate basic legal processes without professional assistance is expanding the practical capability of legal self-help. Each of these interventions corresponds to a specific barrier to legal

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capability, and a comprehensive clinical legal education program should be designed to address all of them.

CHAPTER FIFTY-TWO: THE ACCESS TO JUSTICE LANDSCAPE OF BANGLADESH

Section 52.1: The Formal Legal Aid System: Statutory Framework and Performance

Bangladesh's formal legal aid system is governed by the Legal Aid Services Act 2000 and the Legal Aid Services Regulations 2001, which established the National Legal Aid Services Organisation (NLASO) and a network of District Legal Aid Committees responsible for the delivery of legal aid services across the country. The system was designed to provide legal assistance to those who cannot afford a lawyer, including the poor, women, children, and other vulnerable groups, in both civil and criminal matters. The financial eligibility threshold is linked to income, and the services provided include legal advice, assistance in mediation and settlement, representation before courts and tribunals, and support for appeals.

In principle, this is a comprehensive framework that could, if adequately resourced and effectively administered, make a significant contribution to access to justice. In practice, as documented in the 2025 article in the International Journal of the Legal Profession by Tahura and Alam, the system has been characterized by chronic underfunding, inadequate staffing, weak administration, and a systemic failure to reach the people it is supposed to serve. The article's title asks whether access to justice is an "unattainable ideal" for Bangladesh's legal aid system, and the evidence it presents supports a pessimistic assessment: the legal aid committees are often chaired by District Judges who are simultaneously responsible for managing the courts and cannot give adequate attention to legal aid governance; the legal aid panels of lawyers are inadequately compensated and therefore not incentivized to provide genuine service; the administrative processes for applying for legal aid are cumbersome and inaccessible to those most in need; and the monitoring of service quality is essentially non-existent.

The most significant recent development in the formal legal aid system is the 2025 amendment to the Legal Aid Act, announced at the National Conference on Legal Aid in Dhaka on August 25, 2025, which introduced mandatory pre-case mediation and enforceable settlements as landmark reforms. The announcement was made alongside the launch of the Digital Legal Aid Project, a major initiative led by NLASO in partnership with UNDP and supported by the European Union, which introduces technology-driven tools including online case management, virtual mediation platforms, and digital helplines designed to expand access and reduce the cost and delay of legal aid delivery. Chief Justice Syed Refaat Ahmed, speaking at the conference, described the amendments as "transformative," declaring that "legal aid is no longer reactive but must be preemptive, capable of anticipating change and ensuring that no citizen stands unrepresented before the courts."

These are significant and welcome developments. The mandatory mediation provision, backed by the enforceable settlement framework, addresses one of the most persistent weaknesses of the

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previous system, in which ADR outcomes had no binding force and could be ignored by stronger parties with impunity. The Digital Legal Aid Project directly addresses the geographic and logistical barriers to legal aid access that have historically limited the system's reach to urban and semi-urban areas. And the partnership with UNDP and the EU brings international expertise and additional resources to a system that has chronically lacked both.

However, the structural problems of the formal legal aid system go deeper than these reforms can address. The fundamental problem is not merely technological or procedural but institutional: a legal aid system that depends on a panel of poorly compensated lawyers administering a bureaucratic process managed by overburdened judges will not provide genuinely effective legal assistance regardless of how sophisticated its digital infrastructure becomes. The reforms must therefore be accompanied by institutional reforms of the kind described in Part Two of this commentary, including the development of a genuinely motivated and adequately compensated legal aid bar, the reform of the legal aid committee governance structure, and the development of quality monitoring systems that can assess whether legal aid recipients are actually receiving effective legal assistance.

The connection between the clinical legal education program proposed in this Part and the formal legal aid system is intimate and mutually reinforcing. Law school clinics can serve as legal aid providers under the formal system, with supervising lawyers registered as legal aid lawyers and clinic clients registered as legal aid recipients. This connection would bring clinical programs within the formal funding framework of the legal aid system, providing a sustainable financial basis for clinical operations. It would also give clinical programs a role in quality assurance for the legal aid system, since the educational supervision of clinical work necessarily involves monitoring of service quality in ways that the formal legal aid system's limited administrative capacity cannot achieve.

Section 52.2: The Informal Justice Ecosystem: Shalish, Village Courts, and NGO Mediation

Bangladesh's access to justice landscape is not defined by the formal legal system alone. The formal courts handle a very large number of cases, including the 3.4 million pending cases documented in the 2024 academic analysis, but the much larger volume of disputes that arise in Bangladeshi society is handled outside the formal courts, through a rich ecosystem of informal and semi-formal dispute resolution mechanisms.

The most significant of these is shalish, the traditional village-level dispute resolution mechanism that has been operating in Bengal for centuries and that was introduced in Part One of this commentary as an example of the legal pluralism characteristic of the region's pre-colonial and colonial history. Shalish brings together local elders, community leaders, and representatives of the parties to resolve disputes through mediated negotiation rather than adversarial adjudication. Its advantages are numerous: it is free or very cheap, it is accessible to people in rural areas without the time or money to travel to a district court, it operates in the language and cultural framework of the community, it produces outcomes that parties have accepted rather than outcomes imposed by an external authority, and it is capable of addressing the relational dimensions of disputes rather than merely the legal ones. Research cited in the

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2025 article on ADR in Bangladesh consistently shows that 60 to 70% of local disputes in rural areas are resolved through shalish.

Its disadvantages are equally significant. Shalish operates through local power structures, and in Bangladesh as elsewhere, local power structures are profoundly unequal: elite men dominate, women are systematically disadvantaged, the poor are vulnerable to outcomes that favor the wealthy, and minority communities may find no protection from the majority. The 2024 December article in the academic analysis of ADR in rural Bangladesh identified the lack of formal enforcement mechanisms as a critical weakness: once the mediators' decision is reached, there is no institutional mechanism through which the authority can compel compliance, meaning that stronger parties can ignore outcomes that go against their interests. And shalish has been used historically to impose outcomes on women that are fundamentally incompatible with their legal rights, including the enforcement of customary divorce practices that are invalid under the Muslim Family Laws Ordinance 1961.

The Village Courts Act 2006, amended in 2013, established a quasi-formal dispute resolution mechanism at the Union Parishad level, designed to combine the accessibility advantages of shalish with the procedural and enforcement advantages of the formal legal system. Village courts are presided over by the Union Parishad Chairman and composed of four members nominated by the parties, two from each side, giving each party a stake in the composition of the tribunal and thus in the outcome's perceived legitimacy. They can handle civil disputes up to a value of Tk 25,000 and certain categories of criminal offence. The UNDP's Activating Village Courts Project, implemented across multiple phases from 2009 onward with EU support, has provided training, equipment, and technical support to village courts across the country, and by 2023 over 300,000 individuals had accessed justice through UNDP-supported ADR mechanisms of which village courts were a significant component.

NGO-organized mediation represents a third element of the informal justice ecosystem. Organizations including the Madaripur Legal Aid Association (MLAA), BLAST (Bangladesh Legal Aid and Services Trust), and ASK (Ain o Salish Kendra) have developed structured mediation processes that improve on traditional shalish by incorporating trained mediators, documented processes, and greater attention to the rights of women and marginalized parties. The NGO-led shalish model developed by MLAA achieved an 88% settlement rate in research studies, and its procedural features, including written applications, structured hearings, and documented decisions, provide a degree of accountability absent from traditional shalish.

The relationship between these informal justice mechanisms and the formal legal system, and specifically between these mechanisms and law school clinical programs, is one of the most important and underexplored questions in Bangladeshi legal reform. Clinical programs could play a valuable role in improving the quality of informal justice by providing legal oversight of shalish processes in specific communities, training village court members and NGO mediators in relevant legal principles, and ensuring that the outcomes of informal processes do not violate the fundamental rights of participants, particularly women and minority community members. This role requires a careful balance: respecting the genuine value of informal justice mechanisms while insisting that they operate within the constraints of constitutional rights, and empowering

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communities to resolve their own disputes rather than displacing informal justice with formal processes that the communities cannot access.

Section 52.3: The Role of NGOs in Legal Service Delivery

Bangladesh's civil society sector, including its large and internationally recognized NGO community, has played an important role in filling the gaps left by the formal legal aid system and by inadequate informal justice mechanisms. Organizations including BRAC, ASK, BLAST, MLAA, the Bangladesh National Women Lawyers' Association (BNWLA), and many smaller organizations provide legal information, advice, mediation, and in some cases direct legal representation to communities and individuals who have no other access to legal services.

The NGO sector's contribution to legal service delivery is substantial and should not be underestimated. NGOs have been particularly effective in serving women survivors of gender-based violence, including domestic violence, sexual assault, and acid attacks, providing both legal assistance and the complementary social services that legal assistance alone cannot supply. They have been effective in serving workers whose labor rights have been violated, including workers in the garment sector whose employers have violated the Bangladesh Labour Act. And they have been effective in providing legal information and awareness-raising services that expand community members' knowledge of their rights and the legal remedies available to them.

The limitations of NGO legal service delivery are equally real. NGO funding is inherently unstable, dependent on the priorities of international donors whose interests may shift, and subject to the political pressures that have sometimes led the Bangladeshi government to restrict NGO activities. NGO legal services are typically available only in areas where NGOs have established presences, leaving large parts of the country, particularly rural areas distant from divisional and district headquarters, without access to NGO services. And NGO legal services, however competent, are not substitutes for a properly functioning public legal aid system: a democratic society's obligation to provide access to justice for all citizens is a public obligation that cannot be fully discharged through the charitable and donor-funded activities of civil society organizations.

The clinical legal education program proposed in this Part is designed to complement rather than replace both the formal legal aid system and the NGO sector. It brings additional legal resources into communities, particularly through university-based clinics that draw on the expertise of legal educators alongside the energy and time of supervised students. It provides training and capacity-building support to NGO legal workers and village court members. And it contributes to the development of a legal profession that understands access to justice as a professional obligation rather than a charitable option.

CHAPTER FIFTY-THREE: THE IN-HOUSE LAW SCHOOL CLINIC

Section 53.1: The Design Philosophy

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The in-house law school clinic, in which students work on real cases with real clients under the supervision of dedicated clinical faculty, is the most demanding and most educationally powerful form of clinical legal education. It is demanding because it requires the law school to establish and maintain a genuine legal services organization, with all the infrastructure, staff, liability management, and ethical obligations that this entails. It is powerful because it places students in a genuinely professional context, where the quality of their work has real consequences for real people, in a way that no simulation can fully replicate.

The design philosophy of the in-house clinic should be governed by three principles that create a creative tension between the educational and service dimensions of the clinic's dual mission. The first principle is client primacy: the clinic's first obligation is to its clients, and educational objectives must be pursued in ways that do not compromise the quality of service provided to those clients. A student who makes a serious error at the expense of a client cannot excuse the error by reference to its educational value; the clinic's supervision and quality assurance systems must ensure that errors of this kind do not occur, or are caught and corrected before they harm the client. The second principle is educational integration: client work must be organized in a way that maximizes the educational value for students, with supervisor reflection, case analysis sessions, feedback on professional work, and explicit connections between the clinical experience and the academic curriculum. A clinic that provides good legal services but does not create the conditions for genuine learning has met only half of its dual mission. The third principle is community partnership: the clinic should not simply provide services to a passive community but should develop genuine partnerships with the communities it serves, involving community members in identifying the most pressing legal needs, in designing the programs that address those needs, and in evaluating the effectiveness of the services provided.

Section 53.2: The Model Clinic Structure

A model in-house clinic for a Bangladeshi law school should consist of the following components, each designed to serve the dual mission while maintaining the highest achievable standards in both dimensions.

The client intake system should provide a clear and accessible pathway through which potential clients can learn about the clinic's services and apply for assistance. In an urban context, this pathway should include a physical reception area at the law school or a nearby community office, a telephone helpline, and an online application system. In areas with lower digital connectivity, the physical and telephone pathways must be the primary channels. The intake process should involve an initial assessment of the potential client's legal problem, a determination of whether the problem falls within the clinic's service areas and the client's eligibility for free services, and a clear communication to the client of what they can expect from the clinic. Community liaison officers, who may be senior students or trained community workers, should be responsible for maintaining relationships with community organizations that can refer potential clients, including mosques, temples, schools, markets, hospitals, women's groups, and local government offices.

The casework system should assign each accepted case to a student team of two or three, supervised by a clinical faculty member. The student team is responsible for conducting the

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initial client interview, researching the relevant law, preparing an analysis of the case and a proposed approach, presenting the analysis to their supervisor for review and feedback, implementing the approved approach, and maintaining the case file with documented records of all work done and all communications with the client. The supervisor reviews all work before it is presented to the client or communicated to any external party, conducts regular supervision meetings with the student team, provides written feedback on the quality of the work, and is responsible for the professional quality of the legal services provided.

The case portfolio of the clinic should be carefully designed to provide students with a range of experiences that develops the full spectrum of professional competencies. Every clinic should handle a mixture of case types: some that require primarily legal advice and information, some that require negotiation with counterparties, some that require drafting of legal documents, some that require representation in formal proceedings including court hearings and administrative tribunals, and some that require referral to specialist services including police, social workers, or mental health professionals. Students who work only on advice cases will not develop their advocacy skills; those who work only on cases that reach court hearings will not develop their client counseling skills. The case portfolio should be managed deliberately to ensure that each student, over the course of their clinical placement, works on cases that develop all the relevant competencies.

The practice areas of the clinic should be chosen in light of the specific legal needs of the community the clinic serves and the expertise available among the clinical faculty. Every clinic should cover certain core practice areas that address the most universal and most pressing legal needs of poor communities in Bangladesh: domestic violence and gender-based violence, including both civil protection orders and criminal prosecution support; land rights and housing security, including tenancy disputes, landlessness cases, and housing discrimination; labor rights, including wrongful dismissal, unpaid wages, and workplace safety violations; consumer rights; and administrative law, including the challenge of unlawful government action affecting individual rights. Clinics in university towns may additionally develop specialized practice areas that draw on the expertise of the relevant faculty, such as environmental law clinics at universities whose faculty include environmental law specialists, or intellectual property clinics at universities adjacent to creative industry communities.

Section 53.3: The Clinical Faculty Model

The clinical faculty of the in-house clinic require a different professional profile from the doctrinal faculty of the regular law curriculum. Clinical faculty must combine genuine academic credentials, including expertise in the substantive law of the clinic's practice areas, with significant practical experience of legal representation, including court and tribunal advocacy, client counseling, and negotiation. This combination is relatively rare in Bangladesh, where the boundaries between academia and practice are more fluid than in many other systems but where the specific combination of academic and practical expertise required for clinical supervision is often lacking.

The clinical faculty model appropriate for Bangladesh combines two types of supervisors. The first type is the full-time clinical academic: a lawyer who holds both academic qualifications,

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ideally including a research degree, and substantial practice experience, and who is employed full-time by the law school with a primary responsibility for clinical teaching and scholarship. This person is responsible for the overall design and management of the clinic, the supervision of student clinical work, the development of clinical curriculum and assessment, and the production of scholarship on clinical legal education and access to justice issues. This is the equivalent of the clinical professor model developed in American and Australian law schools. The second type is the part-time clinical supervisor: an experienced practitioner who contributes to the clinic's supervision on a part-time basis, typically for a specified number of hours per week, in exchange for an honorarium from the clinic. Part-time supervisors provide the practical expertise and court experience that full-time clinical academics may lack if their academic careers have reduced their engagement with active practice.

The ratio of supervisors to students in the clinic should not exceed one supervisor to six students, ensuring that students receive genuine individual attention and that the quality of supervision is maintained at a level consistent with the client primacy principle. This ratio is resource-intensive but non-negotiable: a clinic with inadequate supervision is not only educationally poor but professionally and ethically problematic, since it places clients at risk of receiving inadequate legal services. The minimum acceptable clinic size, combining the resource requirements of adequate supervision with the minimum needed for a viable service, is approximately thirty students in placement at any one time, with two full-time and two part-time supervisors.

Section 53.4: The Street Law Program

Alongside the traditional legal aid clinic that provides representation to individual clients, the reformed clinical program should include a Street Law component that delivers legal education directly to community members rather than waiting for community members to bring their legal problems to the clinic. Street Law, a term coined for the program developed at Georgetown University Law Center in the 1970s and subsequently adapted for use in dozens of countries including India and South Africa, involves law students delivering accessible legal education sessions to community groups, schools, prisons, hospitals, and other settings where people who could benefit from legal knowledge are gathered.

In the Bangladeshi context, Street Law sessions should cover the legal topics of greatest practical relevance to the specific community: for garment workers, sessions on labor rights under the Bangladesh Labour Act, workplace safety obligations, the rights of pregnant workers, and the processes for resolving workplace disputes; for rural landholders, sessions on land registration, the rights of tenants under the relevant tenancy legislation, the legal requirements for valid land transfers, and the processes for challenging illegal occupation; for women in communities with high rates of domestic violence, sessions on protection orders under the relevant legislation, the criminal law provisions applying to domestic violence, the procedures for filing complaints with the police, and the services available from legal aid organizations and NGOs; and for young people in secondary schools, sessions on their constitutional rights, the laws governing their situations including the Child Marriage Restraint Act 2017 and the relevant employment law protections for young workers, and the processes for accessing legal help when they need it.

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The Street Law program serves both an immediate access to justice purpose, by expanding the practical legal capabilities of community members through knowledge, and an educational purpose, by developing students' capacity to communicate legal concepts to non-lawyers in accessible and engaging ways. This communication skill is one that the traditional curriculum entirely neglects, because it teaches law students to communicate with other lawyers and with courts, not with the diverse public that lawyers ultimately serve. The ability to translate legal complexity into clear and practical information that non-lawyers can understand and use is a professional competency of genuine importance, and Street Law is the best available vehicle for developing it.

Section 53.5: The Human Rights Clinic

Every university-based clinical program should include a dedicated human rights clinic component, given the constitutional and international human rights framework within which Bangladeshi law operates and the specific human rights challenges that Bangladesh faces. The human rights clinic should focus on the constitutional fundamental rights litigation, the use of PIL (Public Interest Litigation) before the High Court Division, and the engagement with international human rights treaty monitoring bodies.

Public Interest Litigation in Bangladesh has a significant history, with landmark PIL cases having established important principles of constitutional law including environmental rights, the rights of indigenous peoples in the Chittagong Hill Tracts, the rights of workers, and the rights of women. PIL is one of the most powerful tools available to the legal profession for addressing systemic injustices that affect large numbers of people who cannot individually afford litigation, and the ability to identify appropriate PIL cases, research the relevant constitutional and international law, draft PIL petitions, and argue constitutional cases is a valuable professional skill that the human rights clinic can develop.

The human rights clinic should also engage with the international human rights treaty reporting process, assisting civil society organizations in preparing parallel reports to the UN human rights treaty bodies and preparing submissions to the UN Human Rights Council's Universal Periodic Review of Bangladesh. This work provides students with experience of international legal processes, develops their research and writing skills in the international law context, and contributes directly to the accountability of the Bangladeshi state for its international human rights obligations.

The post-July Uprising political context makes the human rights clinic particularly timely and important. The constitutional reform process of 2024-2026 has placed human rights at the center of the national political debate, and the legal profession has a responsibility to contribute to that debate with the legal expertise and practical advocacy skills that only well-educated lawyers can bring. A generation of law students who have worked in human rights clinics, who understand both the doctrinal content of constitutional rights and the practical techniques of human rights litigation, will be a more effective profession for the maintenance and development of Bangladesh's democratic constitutional order.

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CHAPTER FIFTY-FOUR: THE EXTERNAL PLACEMENT AND EXTERNSHIP PROGRAM

Section 54.1: The Case for External Placements

Not every law school has the resources to establish and maintain a full in-house clinic, and even those that do can provide only a limited number of clinical placements within the clinic's own practice areas. The external placement model, in which students are placed with external organizations for supervised practical experience, addresses both of these limitations and provides a range of clinical experiences that no single in-house clinic could offer.

The external placement model is already partially present in Bangladeshi legal education through the informal system of pupillage, in which new law graduates attach themselves to senior advocates before sitting for the enrollment examination. But the pupillage system as currently practiced in Bangladesh is not a properly organized educational program: it is loosely structured, inconsistently supervised, inadequately assessed, and often exploitative in the sense that pupils provide free labor to senior advocates in exchange for experience that is rarely organized around their educational development. The external placement program proposed here is a properly designed educational program with explicit learning objectives, trained supervisors, regular reflection sessions, formal assessment, and integration with the academic curriculum.

Section 54.2: The Range of Placement Settings

The external placement program should offer placements across a diverse range of legal settings, reflecting the full spectrum of contexts in which the legal profession operates. Each placement setting offers a different dimension of professional experience and develops a different aspect of professional competence.

Court placements with district courts, labor courts, family courts, and the High Court Division give students direct experience of formal judicial proceedings, including the management of court lists, the filing and service of court documents, the preparation and presentation of oral arguments, and the management of judicial hearing processes. Students in court placements should be assigned to specific judges or registrars and should observe proceedings systematically while also being given opportunities to participate in preparatory work under supervision. The court placement is the most traditional form of legal practical experience, and its value for developing an understanding of how the formal justice system actually works, as distinct from how it appears in the textbooks, is real and significant.

Placements with legal aid organizations, including NLASO's district offices, BLAST, ASK, and MLAA, give students experience of providing legal services to the most vulnerable clients in the most resource-constrained settings. These placements are among the most educationally valuable for developing the access to justice orientation that the reformed curriculum emphasizes, because they place students in direct contact with the gap between legal rights and legal reality that is the defining feature of Bangladesh's access to justice landscape.

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Placements with NGOs working on specific social justice issues, including women's rights organizations, labor rights organizations, environmental organizations, and organizations working with indigenous communities in the Chittagong Hill Tracts, give students experience of how law intersects with broader social change agendas. These placements develop students' understanding of the political dimensions of legal work, the relationship between legal advocacy and social movement organizing, and the role of international human rights law in domestic advocacy.

Placements with government law offices, including the Attorney General's office, the Law Commission, and the legal departments of major regulatory agencies, give students experience of how law functions within the state apparatus, developing an understanding of public law administration that is difficult to acquire from academic study alone. Students in government placements can contribute to research projects on legal reform, draft ministerial submissions, and participate in the technical legal work of government that forms an important but often invisible dimension of the legal profession.

Placements with commercial law firms and the legal departments of major corporations give students experience of commercial legal practice, developing their understanding of transactional work, commercial drafting, regulatory compliance, and the specific professional culture of the commercial bar. Not all law school clinics can or should focus exclusively on social justice work; the reform of the legal profession as a whole requires lawyers who are competent in commercial practice to be educated in the full dimensions of their professional responsibility, including their obligations to access to justice and the rule of law.

Section 54.3: The Supervision and Reflection Framework

External placements are educationally effective only when they are properly structured, with clear learning objectives, trained placement supervisors, regular academic oversight, and systematic reflection on the professional experience. A placement that places a student in an external organization without these structures is merely work experience rather than clinical legal education, and it is likely to reproduce the professional habits and values of the placement organization rather than developing the critical professional identity that the reformed curriculum aims to produce.

Every external placement must be governed by a placement agreement between the law school and the external organization, specifying the learning objectives, the supervision arrangements, the student's status and entitlements, and the law school's right to monitor the quality of the placement and to withdraw students from placements that do not meet the required standards. Placement supervisors at external organizations must receive training from the law school in how to supervise and assess student clinical work, covering the specific learning objectives of the placement, the assessment tools to be used, and the mechanisms for raising concerns about student performance or placement quality.

Students on external placements must attend weekly reflection seminars at the law school, facilitated by the academic clinical coordinator, at which students from different placement settings share their experiences, identify the legal and ethical issues they have encountered, and

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receive feedback from their peers and their academic supervisor. These reflection seminars serve multiple purposes: they provide the academic structure that gives the placement its educational significance, they build a community of clinical students who can learn from each other's diverse experiences, and they create a regular opportunity for the academic clinical coordinator to identify and address concerns about individual students' performance or individual placements' quality.

The assessment of external placements should include both a supervisor assessment, in which the placement supervisor evaluates the student's performance against specified criteria, and a self-assessment and reflection portfolio, in which the student documents their learning through the placement and reflects on their professional development. The portfolio format is particularly valuable for developing the metacognitive dimension of professional formation: the ability to reflect on one's own professional performance, identify areas for development, and articulate a plan for continued growth. This metacognitive capability, which is the foundation of lifelong professional learning, is one of the most important outcomes of clinical legal education and one of the most neglected in traditional legal education that focuses exclusively on the transmission of knowledge.

CHAPTER FIFTY-FIVE: SIMULATION-BASED CLINICAL EDUCATION

Section 55.1: The Role of Simulation

Simulation-based clinical education, in which students engage with realistic but fabricated professional scenarios rather than with real clients and cases, plays a complementary role to both in-house clinics and external placements in the reformed clinical curriculum. Simulations are not a substitute for real client work; they cannot replicate the ethical weight of responsibility for a real person's legal situation, the unpredictability of real client interactions, or the genuine professional authority that comes from operating in a real professional context. But simulations have specific educational advantages that real client work does not offer, and they are particularly valuable in the early stages of clinical education before students are ready for the full professional responsibility of real client work.

The most important educational advantage of simulation is control: the instructor can design the scenario to address specific learning objectives, can pause the simulation at key moments to provide feedback and discussion, can rerun the same scenario with variations to develop students' understanding of how different contextual factors affect professional judgment, and can ensure that every student encounters the full range of situations the simulation is designed to address regardless of what real client cases happen to arise during their clinical placement. This control makes simulation particularly effective for developing competencies that require practice in specific, reliably replicated situations, such as the management of client disclosure of legally sensitive information, the handling of unexpected revelations in client interviews, and the management of conflicts of interest.

Section 55.2: The Client Interview Simulation

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The client interview is one of the most fundamental professional skills in legal practice and one of the most difficult to develop without practice. A lawyer who cannot conduct an effective client interview cannot identify the relevant facts, cannot establish the client relationship of trust that effective representation requires, cannot adequately explain the client's legal situation in accessible terms, and cannot properly advise the client about the options available to them. Yet client interviewing is never taught in the traditional Bangladeshi law curriculum and is rarely included in formal assessment.

The client interview simulation should be a mandatory assessed component of the clinical curriculum in the second year of the law program, before students begin their externships or clinical placements. It should involve a structured roleplay in which a trained actor or faculty member plays the role of a client with a specific legal problem, and the student conducts an initial client interview of approximately thirty minutes under video observation. The interview is then reviewed with the student, using the video to identify specific moments where the student's approach was effective or could be improved, and a written assessment is provided against criteria relating to listening skills, information gathering, rapport building, legal analysis, and client communication.

The client interview simulation should use factual scenarios drawn from the kinds of legal problems that Bangladeshi lawyers most commonly encounter, including land disputes, family law matters, employment disputes, and criminal matters. The scenarios should be carefully designed to include elements that test specific competencies: a moment when the client discloses something legally sensitive that must be handled with both honesty and sensitivity; a moment when the client's stated problem differs from their actual legal problem; a moment when the client's expectations are unrealistic and must be managed carefully; and a moment when the student must explain a complex legal concept in terms that a non-lawyer can understand.

Section 55.3: The Negotiation and Mediation Simulation

The negotiation simulation, building on the ADR course content described in Part Five, should provide students with intensive practice in the skill of negotiating legal disputes toward resolution. Negotiation is at once a technical skill that can be developed through deliberate practice and a relational art that requires empathy, creativity, and situational judgment that no textbook can provide. The most effective negotiation simulations are those that are realistic enough to engage students genuinely in the persuasion and problem-solving challenges of negotiation while being safe enough for students to take risks that they might avoid in a real professional context where the consequences of failure are borne by clients.

The negotiation simulation program should include at least three assessed exercises across the clinical curriculum: a bilateral negotiation between two parties without a mediator, in which students represent opposing parties; a mediated negotiation in which one student acts as mediator while others represent the parties; and a multi-party negotiation involving three or more parties with different and partially conflicting interests. Each exercise should be debriefed in a facilitated session that draws on both the participants' own reflections and the facilitator's observations, identifying what was effective, what could have been better, and what specific negotiation principles the exercise illustrates.

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The family mediation simulation deserves special attention in the Bangladeshi context, given the centrality of family disputes, including divorce, maintenance, custody, and inheritance, to the legal needs of many communities and the specific challenges of mediating family disputes across the religious and cultural diversity of Bangladeshi society. Family mediators in Bangladesh must understand not only the legal framework of the Muslim Family Laws Ordinance and the relevant Hindu and Christian personal law, but the cultural norms and family dynamics that shape the parties' interests and their willingness to reach agreement. The family mediation simulation should engage specifically with these culturally specific dimensions, developing students' cultural sensitivity alongside their technical mediation skills.

Section 55.4: The Problem-Based Trial Advocacy Program

The trial advocacy simulation, in which students argue a fully simulated trial or tribunal hearing from opening to closing, is the most comprehensive and demanding simulation exercise in the clinical curriculum. Unlike the moot court exercise, which is typically limited to an appellate argument on a point of law, the trial advocacy simulation involves all stages of a first-instance hearing: opening statements, examination and cross-examination of witnesses, introduction of documentary evidence, legal submissions, and closing argument. It requires students to integrate the full range of professional competencies including case preparation, witness examination strategy, evidential analysis, and oral advocacy.

The trial advocacy program should be offered in the third or fourth year, after students have developed sufficient legal knowledge and basic skills to engage meaningfully with the full complexity of a simulated trial. It should be taught in small groups of ten to twelve students, working through a sequence of trial advocacy exercises that progressively increase in complexity and that cover different types of proceedings including civil trials, criminal trials, and tribunal hearings. Expert actors or trained student volunteers should play the roles of witnesses, providing students with the realistic experience of witness examination that no script-based exercise can provide.

The assessment of trial advocacy simulation exercises should be conducted by panels of experienced practitioners, including judges, senior advocates, and experienced litigators, who bring genuine professional expertise to the evaluation of student performance. Their feedback should be specific, technically grounded, and delivered in a way that respects students' dignity while being honest about the gaps in their performance. The involvement of practitioners in assessment serves both the quality and the legitimacy of the clinical education program: it ensures that professional standards are applied, and it builds the relationships between the law school and the profession that are essential to the long-term sustainability of the clinical program.

CHAPTER FIFTY-SIX: ASSESSMENT OF CLINICAL COMPETENCIES IN FULL DETAIL

Section 56.1: The Challenge of Assessing Professional Competence

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The assessment of professional competencies in clinical legal education presents challenges that are qualitatively different from those of assessing academic competencies in doctrinal courses. Academic assessment can be conducted through standardized instruments, written examinations or research papers, applied consistently across large numbers of students, and evaluated against relatively explicit criteria that can be stated in advance and applied reliably by trained assessors. Professional competence assessment is far more complex: the competencies at stake are multidimensional, contextually embedded, and partially tacit, in the sense that expert practitioners can recognize competent performance when they see it without always being able to articulate the criteria by which they recognize it.

The response to this challenge in the most developed clinical legal education systems is not to abandon the aspiration to rigorous assessment but to develop multiple assessment methods that together provide a comprehensive picture of each student's clinical competence, to invest seriously in the development of assessors who can apply clinical assessment criteria reliably, and to build in multiple review mechanisms that check for consistency and fairness across different students and different placement settings.

Section 56.2: The Clinical Portfolio

The clinical portfolio is the organizing assessment instrument of the clinical legal education program. It is a collected body of evidence of a student's clinical work and professional development, assembled by the student over the course of their clinical placement, and evaluated by the supervising faculty against specified criteria relating to the five competency domains defined in Part Five's learning outcomes framework.

The portfolio should include the following components. A case log documenting all the cases and client interactions the student has been involved in, with brief descriptions of the nature of each matter, the role the student played, and the outcome. Work product samples including examples of legal research memoranda, client advice letters, drafted legal documents, and written court submissions produced by the student during the placement, with supervisor annotations identifying their quality. Reflective journals in which the student records, at least weekly, their observations about their clinical work, the professional and ethical issues they have encountered, and their thinking about how the experience relates to their academic knowledge and their developing professional identity. Supervisor assessments in which the clinical supervisor evaluates the student's performance at regular intervals, using a specified assessment instrument with criteria for each competency domain. Peer assessments from fellow students who have observed the student's clinical work in specific exercises. And a final reflective essay in which the student integrates the learning from the entire clinical program, identifying the most significant moments of professional development, the competencies they have developed most strongly, the areas they need to continue developing, and their vision of their professional identity as a lawyer.

The evaluation of the portfolio should be conducted by the academic clinical supervisor in discussion with the placement supervisor, using assessment criteria that are shared with students at the beginning of the clinical program and that specify what evidence of each competency level would look like at the adequate, good, and excellent performance levels. Students should have a

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right to discuss the portfolio evaluation with their assessors and to submit a written response if they disagree with any element of the assessment.

Section 56.3: The Clinical Viva

The clinical viva, an oral examination in which the student discusses specific aspects of their clinical work and the legal and ethical issues it raised with a panel of assessors, provides an additional dimension of assessment that the portfolio cannot supply. The portfolio is a retrospective account of the student's clinical work, assembled and edited by the student, which may present their work in a more favorable light than the actual quality of their performance warrants. The clinical viva requires the student to engage in real-time analytical discussion of their work, demonstrating the genuineness of the legal and ethical reasoning they claim to have employed and their ability to respond to questioning about specific decisions they made.

The clinical viva panel should consist of the academic clinical supervisor and at least one external assessor, typically an experienced practitioner, who provides an independent evaluation of the student's performance. The viva should last approximately forty-five minutes and should cover three areas: a discussion of a specific complex case or client situation from the student's clinical experience, in which the assessors probe the quality of the student's legal analysis and professional judgment; a discussion of an ethical dilemma the student encountered or could have encountered in their clinical work, in which the assessors assess the student's ethical reasoning; and a forward-looking reflection on the student's professional development plan, in which the student identifies the competencies they need to continue developing and articulates how they intend to address this need in their subsequent professional career.

The clinical viva should be recorded, with the student's consent, for quality assurance purposes and to enable external moderation of assessment standards across different clinical programs. A sample of recorded vivas should be reviewed annually by the National Legal Education Commission's clinical education advisory group to assess whether consistent standards are being applied across different institutions and to identify good practices that can be shared across the system.

CHAPTER FIFTY-SEVEN: THE GOVERNANCE AND FUNDING FRAMEWORK FOR CLINICAL LEGAL EDUCATION

Section 57.1: The National Clinical Legal Education Framework

The establishment of clinical legal education as a systematic component of the Bangladeshi legal education system requires a governance framework that operates at the national level, setting minimum standards, providing funding, developing training for clinical faculty, and monitoring the quality and impact of clinical programs across all accredited law schools. This national framework is proposed as a component of the broader National Legal Education Framework described in Part Three, but the clinical dimension has specific features that warrant dedicated governance arrangements.

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The National Clinical Legal Education Advisory Council, established under the National Legal Education Commission, should consist of experienced clinical legal educators, representatives of the access to justice community including legal aid organizations and NGOs, representatives of the courts and the Bar Council, and lay members representing the public interest in access to justice. The Advisory Council should be responsible for: developing national minimum standards for clinical legal education programs; advising the Commission on the accreditation of clinical programs at individual law schools; developing training programs for clinical faculty and placement supervisors; commissioning research on the effectiveness of clinical programs and their impact on access to justice; and managing the national clinical funding mechanism.

Section 57.2: The Clinical Funding Architecture

The most persistent barrier to the development of clinical legal education in Bangladesh is financial. Running a genuine clinical program is expensive: it requires dedicated clinical faculty who are adequately compensated for their dual academic and professional role, physical space including client interview rooms and student work spaces, professional liability insurance, case management systems, and the operational costs of serving real clients. These costs cannot be absorbed within the existing resource allocations of most Bangladeshi law programs, which are already stretched by their core teaching functions.

The clinical funding architecture should draw on multiple sources, reflecting both the educational function of clinical programs within the law school and the access to justice function they perform for the communities they serve. The first funding source is the law school's own budget allocation to clinical education, which should be specified as a minimum percentage of the total educational budget in the accreditation standards. Setting a minimum allocation forces institutions to treat clinical education as a genuine budget priority rather than an optional extra that is funded from whatever is left over after the core teaching functions are resourced.

The second funding source is the National Legal Aid Services Organisation, which should be required by the amended Legal Aid Act to allocate a specified proportion of its funding to law school clinic-based legal aid delivery. This allocation reflects the reality that law school clinics, when properly organized, are cost-effective legal aid providers: the combination of student labor with professional supervision allows a higher volume of cases to be handled per qualified supervisor than a traditional legal aid office, and the educational overhead of student supervision is offset by the training and pipeline benefits that clinic-based legal aid provides to the profession as a whole. The 2025 amendments to the Legal Aid Act, which introduced mandatory mediation and enforceable settlements, create an opportunity to build in this clinic-funding provision as part of the reformed legal aid framework.

The third funding source is international development assistance, channeled through the Digital Legal Aid Project partnership between NLASO, UNDP, and the EU announced in August 2025. The EU-UNDP partnership has already demonstrated a commitment to expanding access to justice through technology-driven legal aid reform, and the extension of this partnership to include support for law school clinical programs would represent a natural and well-justified evolution of the reform agenda. The UNDP's 2025 partnership with the Supreme Court of Bangladesh, under the Judicial Reform Roadmap introduced by Chief Justice Syed Refaat

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Ahmed on September 21, 2024, similarly creates a framework within which the clinical legal education component of judicial reform could be supported through international development finance.

The fourth funding source is the private sector, including both law firms and corporations that have an interest in the development of a capable, ethically grounded legal profession and a more effective justice system. Pro bono contributions by law firms, including the secondment of junior and mid-career lawyers to clinical programs as part-time supervisors, are a valuable resource that the clinical program should actively seek. Corporate legal departments have a similar interest in the development of legal talent that their future hiring will draw on, and modest corporate donations to clinical programs can be attracted through recognition and relationship-building activities.

Section 57.3: The Legal Liability Framework

The clinical legal education program operates in a professional context that creates genuine legal liability risks: students working on real cases may make errors, and those errors may harm clients. The management of professional liability in the clinical setting requires a clear framework that protects both clients and students while enabling students to engage in genuine professional work rather than being confined to purely advisory or observational roles.

The solution adopted in most clinical legal education systems is a combination of professional indemnity insurance covering the clinical program as a whole, with the law school or its parent university as the insured party; a supervision protocol that ensures all work is reviewed by a qualified lawyer before it is presented to clients or communicated to external parties; and an ethical framework that makes clear to students the scope of their authority, the limits of their professional status, and the obligations they owe to their clients during the clinical placement.

In Bangladesh, the legal framework for student practice requires specific attention. Students who have not yet been enrolled as advocates by the Bar Council cannot represent clients in court proceedings in their own right. This means that a qualified supervisor must appear on behalf of clinic clients in all court proceedings, with students assisting in the preparation and potentially appearing in a non-speaking capacity as observers or junior participants where the court permits. This is not a barrier to meaningful clinical education: much of the most valuable clinical work occurs outside the courtroom, in client interviews, legal research, document drafting, and negotiation, all of which students can perform under supervision without appearing as formally qualified lawyers.

The Bar Council should be approached to develop a formal student practice framework that specifies the conditions under which law students can engage in supervised legal work, including a student practice certificate system analogous to those in operation in the United States, Australia, and South Africa. Such a framework would provide students with clear authority to perform specified legal functions under supervision, would provide clarity for clients about the status of the person representing them, and would provide the profession and the courts with confidence that student practice is occurring within a defined professional framework.

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CHAPTER FIFTY-EIGHT: THE COMMUNITY LEGAL EDUCATION CENTER NETWORK

Section 58.1: Beyond the Law School: Taking Legal Services to Communities

The in-house clinic and the external placement program both operate primarily from the law school or from external organizations based in urban areas. Neither is well-positioned to serve the rural communities where the majority of Bangladesh's population lives and where the access to justice gap is most acute. Bridging this geographic gap requires a different institutional model: the Community Legal Education Center (CLEC), a community-based legal information and advice facility that brings legal services into rural and peri-urban communities rather than requiring community members to travel to urban institutions.

The CLEC model has been developed in various forms across the developing world, including in India through the legal literacy camps organized under the National Legal Services Authority, in South Africa through the community advice offices supported by the Legal Resources Centre, and in Bangladesh itself through the community legal services programs of organizations like MLAA and ASK. The innovation proposed here is to systematically integrate CLECs with law school clinical programs, using student clinical placements and Street Law activities as the primary vehicles for CLEC service delivery, and using the law school as the institutional backbone that provides training, supervision, quality assurance, and professional legal expertise to the community centers.

Section 58.2: The CLEC Design

Each CLEC should be established in a Union Parishad or upazila headquarters, ideally in a building already used for community purposes such as a Union Parishad office, a community health center, or a school. The CLEC should operate on a regular schedule, typically two or three days per week, during which a rotating team of law students, supervised by a qualified lawyer who visits at least once per week, provides legal information and advice to community members who come to the center. On other days, the CLEC should serve as a base for Street Law activities in local schools and community organizations, for outreach to women's groups and other specific community constituencies, and for referral of cases requiring more intensive assistance to the law school's in-house clinic or to partner legal aid organizations.

The CLEC should maintain a register of legal problems brought to it, categorized by type, to provide data on the pattern of legal need in the community that can inform both the law school's clinical program design and the broader legal reform agenda. This data function of CLECs is an underutilized resource in Bangladesh's access to justice landscape: systematic data on the types of disputes that arise most frequently, the legal questions that community members most commonly bring to CLECs, and the outcomes of CLEC assistance would provide a much richer empirical basis for legal reform policy than the anecdotal evidence that currently shapes most policy discussions.

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The CLEC should maintain a paralegal network: trained community members who can provide basic legal information, identify legal problems that require professional assistance, and facilitate referrals to the CLEC and to other legal services. Paralegal training is one of the most cost-effective access to justice interventions available, because it multiplies the reach of professional legal services by creating a network of knowledgeable community intermediaries who can provide the first level of legal assistance without requiring the time of a qualified lawyer. The law school clinical program can provide the training for community paralegals as part of its Street Law activities, and the trained paralegals can then continue to operate through the CLEC network after the student cohort that trained them has completed its placement.

Section 58.3: Gender-Sensitive Legal Services in the CLEC

The access to justice barriers faced by women in Bangladesh are specific and severe, and the CLEC design must explicitly address them. Women in many communities face social barriers to seeking legal assistance in mixed settings, including the expectation that a woman's legal problems should be managed by her husband or male family members, the stigma attached to women who pursue legal remedies for domestic problems, and the practical difficulty of attending CLEC sessions during hours when women's domestic responsibilities prevent them from leaving their homes. Addressing these barriers requires specific design choices.

Every CLEC should have at least one dedicated women's legal services session per week, conducted by female law students and a female supervisor, in a setting that is accessible and safe for women to attend without male family members. Outreach to women's groups, including women's savings groups, mothers' groups, and other women-only community organizations, should be a regular feature of CLEC activity, bringing legal information and advice to settings where women are already gathered rather than expecting women to come to a public legal center. The training of female paralegals should be prioritized, so that the first-level legal assistance available to women in communities is provided by other women who understand the specific barriers that women face and who can provide assistance in a culturally sensitive way.

The legal services provided to women through CLECs should address the full range of legal needs that women most commonly experience: marriage and divorce under the Muslim Family Laws Ordinance, including the registration of marriage contracts, the exercise of talaq rights, and the enforcement of maintenance obligations; protection from domestic violence under the Nari o Shishu Nirjatan Daman Ain 2000; property and inheritance rights, including the rights of women under both Muslim personal law and general property law; and labor rights for women workers, including garment workers, domestic workers, and women in the informal economy.

CHAPTER FIFTY-NINE: CLINICAL LEGAL EDUCATION AND LEGAL REFORM

Section 59.1: The Clinic as a Site of Legal Reform Advocacy

Clinical legal education programs, through their accumulated experience of the legal needs of disadvantaged communities, are uniquely positioned to contribute to legal reform advocacy.

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They see, in the daily experience of their clients, where the law fails to serve justice, where procedural requirements act as barriers to legitimate rights claims, where substantive legal rules produce outcomes that are formally correct but substantively unjust, and where the gap between formal legal rights and practical legal capabilities is most acutely felt. This empirical knowledge of the law's operation at the sharp end of need is precisely the knowledge that is most useful to law reformers and most rarely available to them.

The clinical program's contribution to legal reform should be organized through a dedicated policy and advocacy function within the clinic, staffed by the senior clinical faculty in collaboration with interested students. This function should be responsible for: identifying the patterns of legal need and legal failure that the clinical caseload reveals; analyzing the structural legal issues underlying these patterns; developing reform proposals based on the empirical evidence of the clinic's experience; engaging with the relevant government departments, the Law Commission, the Bar Council, and parliamentary committees to advocate for these reform proposals; and publishing clinical research that documents the access to justice problems the clinic has identified and the reform proposals it recommends.

The connection between clinical legal education and the Law Commission of Bangladesh deserves specific development. The Law Commission, which has produced a number of important reports on legal reform including the 2006 report on legal education, has the mandate and the authority to recommend legislative and regulatory reform to the government, but it often lacks the empirical grounding in the lived experience of legal need that would strengthen its reform recommendations. A formal relationship between the major law school clinical programs and the Law Commission, in which clinical programs provide empirical evidence about the operation of specific laws and their impact on disadvantaged communities, and in which the Law Commission considers this evidence in its reform recommendations, would benefit both institutions and would strengthen the quality of the legal reform process.

Section 59.2: The Women's Rights Clinic as Legal Reform Instrument

The intersection of clinical legal education with gender justice is one of the most important dimensions of the clinical program's contribution to legal reform. Women in Bangladesh face a distinctive combination of formal legal rights that are routinely violated in practice, personal law provisions that are discriminatory on their face, and social norms that prevent women from asserting even those rights they formally possess. A clinical program that systematically documents these patterns of legal failure, represents women clients in asserting their rights, and contributes to advocacy for reform based on documented experience is making a contribution to gender justice that extends well beyond the individual cases it handles.

The women's rights clinic, as a specialized unit within the broader clinical program at each law school, should be organized around three functions. The first is individual representation: providing legal assistance to individual women clients in family law matters, domestic violence cases, employment discrimination cases, and property disputes, with the dual purpose of serving the individual client and developing the clinical caseload that informs the advocacy and reform function. The second is systemic advocacy: using the patterns revealed by the individual casework to identify systemic failures, develop reform proposals, and engage with the relevant

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institutions, including the government, the courts, and the Bar Council, to advocate for changes that will benefit not only individual clients but the broader population of women who face similar problems. The third is community empowerment: working with women's groups in the communities served by the clinic to build awareness of legal rights and the practical capability to assert them, using Street Law activities, paralegal training, and community legal education to expand the base of women who can navigate the legal system independently or with minimal assistance.

Section 59.3: Environmental Justice and the Environmental Law Clinic

Bangladesh's extreme vulnerability to climate change and environmental degradation creates a specific clinical education opportunity that law schools should seize: the environmental law clinic, which provides legal services to communities affected by environmental harm and contributes to the development of environmental jurisprudence through PIL cases and regulatory advocacy.

Bangladesh's environmental law framework, including the Environment Conservation Act 1995 and the Environmental Courts Act 2000, provides the legal basis for both individual claims by communities affected by environmental harm and public interest litigation challenging environmental violations by corporations and government agencies. The track record of environmental PIL in the Supreme Court, including landmark cases on river pollution, industrial effluents, and air pollution, demonstrates that environmental legal advocacy can produce real changes in corporate and governmental behavior. But the capacity for environmental legal advocacy is limited by the small number of lawyers with genuine expertise in environmental law, and the development of this capacity through clinical legal education is both an educational and a public interest priority.

The environmental law clinic should partner with environmental NGOs, community groups affected by environmental harm, and academic environmental scientists to develop cases that combine legal expertise with the scientific evidence required to demonstrate the harm caused by environmental violations. The interdisciplinary character of environmental law cases, which require the lawyer to understand both the legal framework and the relevant scientific evidence, makes environmental law clinic work a particularly powerful vehicle for developing the interdisciplinary thinking that Part Three's curriculum analysis identified as one of the most significant deficits of current legal education.

CHAPTER SIXTY: JURISPRUDENTIAL PERSPECTIVES ON ACCESS TO JUSTICE

Section 60.1: Access to Justice as a Constitutional Principle

The access to justice commitment of the reformed clinical legal education program rests not merely on philanthropic impulse but on constitutional mandate. The Constitution of Bangladesh 1972, in its fundamental rights provisions and in the directive principles of state policy, contains a robust framework of constitutional obligation regarding access to justice. Article 27's guarantee

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of equality before the law and equal protection of the law, Article 31's right to protection of law, Article 39's guarantee of freedom of thought and expression, and Article 44's guarantee of the right to enforce fundamental rights through the courts all provide constitutional foundation for a state obligation to ensure that formal legal rights are not merely declared but practically accessible.

The directive principles, while not directly enforceable in court as individual rights, establish the state's policy obligations in clearer and more extensive terms. Article 19's commitment to ensuring equality of opportunity, Article 28's prohibition of discrimination on grounds of religion, race, sex, or place of birth, and Article 32's protection of the right to life and personal liberty all bear directly on the access to justice agenda. A constitutional culture that takes these provisions seriously, rather than treating them as hortatory declarations without operational content, would recognize the development of a comprehensive access to justice system, including legal aid, clinical legal education, and community legal services, as a constitutional obligation rather than a discretionary policy choice.

The constitutional jurisprudence of access to justice has been developed most significantly through the Public Interest Litigation jurisdiction of the High Court Division. Landmark PIL cases have addressed a wide range of access to justice issues including the rights of prison detainees, the protection of domestic workers, the rights of garment workers, and the environmental rights of communities affected by industrial pollution. The clinical human rights program can both learn from this jurisprudence and contribute to its further development by bringing cases that extend the constitutional principles into new areas of unmet need.

Section 60.2: Legal Empowerment and Participatory Theories of Justice

The concept of legal empowerment, developed by scholars and practitioners including Vivek Maru and the Commission on Legal Empowerment of the Poor established by the United Nations in 2005, provides a theoretical framework for understanding clinical legal education as part of a broader strategy for democratic development. Legal empowerment refers to the process by which people, particularly those living in poverty, understand and exercise their legal rights, and by which they use law as an instrument of accountability and change. On the legal empowerment approach, the access to justice problem is not merely a service delivery problem, to be solved by providing more lawyers to more poor people, but a problem of power: the law is an instrument of power, and those who understand and can use it have power over those who do not.

Clinical legal education programs, particularly those organized around the dual mission model of service and empowerment, contribute to legal empowerment when they are designed not merely to solve individual legal problems but to develop in community members the knowledge and confidence to assert their rights on an ongoing basis. The Street Law program, the paralegal training network, and the community education activities of the CLEC all embody the legal empowerment approach by developing capabilities rather than merely providing services. The distinction is important: a client who receives a favorable outcome in a specific case but does not develop the knowledge to prevent a similar violation from occurring, or the confidence to assert their rights if it does, has been helped but not empowered.

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The participatory theories of justice associated with scholars including Iris Marion Young, whose book Justice and the Politics of Difference argued that justice requires not only the fair distribution of goods but the genuine participation of all people in the political processes that determine the rules governing their lives, provide additional philosophical grounding for the access to justice agenda. On Young's account, a legal system that is formally open to all but practically accessible only to the wealthy and the educated is not merely inefficient but unjust, because it systematically excludes the majority of citizens from full participation in the governance of their own lives. Clinical legal education, by bringing legal capability within the reach of those who currently lack it, is a contribution to the participatory justice that democratic theory requires.

Section 60.3: Islamic Concepts of Justice and Legal Service

The Islamic philosophical tradition's concept of justice, centered on the principles of 'adl (justice) and ihsan (benevolence), provides a dimension of the access to justice philosophy that is particularly resonant in Bangladesh's primarily Muslim society. The Quranic injunction to stand firmly for justice, even against oneself or one's family, and the prophetic tradition of providing legal assistance to those who cannot afford it are resources within the Islamic tradition that support the access to justice mission of the clinical legal education program.

The concept of waqf, the Islamic institution of charitable endowment, historically provided a mechanism through which wealthy members of Muslim communities financed services for the poor, including, in classical Islamic societies, legal assistance through the institution of the qadi's court which was obligated to hear cases without charge. The modern revival of social waqf as a vehicle for community development finance has been gaining momentum in Bangladesh, with the Awqaf Administration of Bangladesh managing endowments that support social services. The development of waqf-funded community legal services, integrated with the law school clinical program, would represent a creative synthesis of Islamic charitable tradition and modern access to justice strategy that could have particular resonance and sustainability in the Bangladeshi context.

The Islamic concept of maslaha, public interest or public benefit, which was discussed in Parts Two and Four of this commentary, applies directly to the access to justice mission: a society in which the poor cannot access justice because they cannot afford legal services is not organized in accordance with the public interest as Islamic jurisprudence defines it. The maqasid framework, which identifies the protection of life, intellect, lineage, property, and religion as the fundamental purposes of Islamic law, provides a basis for arguing that access to the legal system for the vindication of rights relating to all five of these purposes is not merely desirable but required by the most fundamental principles of Islamic justice.

CONCLUDING SYNTHESIS OF PART SIX: THE LAW SCHOOL AS INSTITUTION OF DEMOCRATIC COMMUNITY

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The argument of Part Six has moved from the philosophical foundations of clinical legal education through the design of specific clinical programs and the governance frameworks that support them, to end at the most fundamental claim that underlies the entire access to justice agenda: that law schools are not merely educational institutions providing professional training but institutions of democratic community, embedded in specific societies with specific histories and specific patterns of need, and obligated by their foundational commitment to justice to engage with those societies in ways that go beyond the production of professionally credentialed graduates.

This claim is not original to this commentary; it is the founding conviction of the clinical legal education movement globally, articulated most powerfully by the great clinical legal educators of the twentieth and twenty-first centuries from Jerome Frank through Gary Bellow, Frank Bloch, and N.R. Madhava Menon to the contemporary scholars who are developing clinical legal education in the Global South. What is specific to Bangladesh is the particular form that this obligation takes in a country with a 53-year history of democratic struggle, a legal system that bears the weight of colonial inheritance and post-colonial authoritarian distortion, an access to justice crisis that affects tens of millions of people, and a reform moment in which the reconstruction of democratic institutions is being pursued with genuine urgency and public engagement.

The reformed clinical legal education program proposed in this Part is a contribution to that reconstruction. It is a contribution through service: the direct provision of legal assistance to those who need it and cannot access it elsewhere. It is a contribution through education: the formation of a generation of lawyers who understand access to justice as a professional obligation rather than a charitable option. It is a contribution through research: the systematic documentation of the law's operation in communities and the development of evidence-based reform proposals. And it is a contribution through institution-building: the creation of community legal education centers, paralegal networks, and CLEC-based services that will outlast individual student cohorts and become permanent features of the access to justice landscape.

The UNDP Bangladesh's statement in its 2024 report that it was "looking ahead to 2026" with the aspiration that "village courts aspire to further extend their services to marginalized populations" captures both the ambition and the modesty appropriate to a reform agenda of this scope. Extending justice to marginalized populations is a generational project, not a single intervention. Clinical legal education programs are one instrument among many that must be deployed consistently over decades, not a quick fix that will resolve Bangladesh's access to justice crisis in a program cycle. But they are among the most educationally efficient and socially significant instruments available, because they do the work of justice while simultaneously forming the professionals who will continue that work for the rest of their careers.

The justice that Bangladesh's Constitutional preamble promised in 1972, the "equality of status, of opportunity and before law, and to promote among them all" the "dignity of the human person," will not be realized in the courtrooms alone. It will be realized in part through the communities that law school clinics serve, through the Street Law sessions delivered in rural schools, through the paralegals trained at CLECs, through the PIL cases argued in the High

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Court Division by clinical faculty and students, and through the generations of lawyers who carry into their professional lives the conviction, formed in their clinical years, that law is not merely a technical skill but a democratic responsibility.

BIBLIOGRAPHICAL NOTES AND REFERENCES FOR PART SIX

The most significant primary source for Part Six is the August 2025 announcement of the Digital Legal Aid Project and the 2025 amendments to the Legal Aid Act, reported by UNDP Bangladesh and widely covered in the Bangladeshi press including the Dhaka Tribune. The conference report from the National Conference on Legal Aid in Dhaka on August 25, 2025, including Chief Justice Syed Refaat Ahmed's keynote address, is the primary document for understanding the current direction of legal aid reform in Bangladesh.

The 2025 article by Tahura and Alam in the International Journal of the Legal Profession, "Looking Ahead to Legal Aid Services in Bangladesh: Is Access to Justice an Unattainable Ideal?", published at Volume 32, Issue 2, provides the most comprehensive recent analysis of the formal legal aid system's structural inadequacies and the recommendations for reform. The Cambridge Core article analyzing legal aid in Bangladesh as a "paradox," first published in 2017 but now updated with a 2025 forward-looking study, provides the academic framework within which the formal legal aid system's failures are best understood.

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The January 2025 SSRN publication by Jane Schukoske, "Advancing the Sustainable Development Goals in Bangladesh through the Whole of Society Approach: Clinical Legal Education and Community Participation," published as a chapter in the 2024 edited volume Law, Human Rights and Legal Education, is the most directly relevant recent analysis of community-engaged clinical legal education in the Bangladeshi context, focusing on the work of Professor Mizanur Rahman.

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END OF PART SIX

Part Seven will develop the specialist accreditation framework in full institutional detail, covering: the philosophy and design of legal specialization; the international comparative models of specialist accreditation including the English and Welsh specialist panel systems, the Australian specialist accreditation schemes, the American board certification systems, and the Indian specialist bar traditions; the specific specialization areas most important for Bangladeshi legal practice; the qualification pathways for specialist accreditation; the governance of the specialist accreditation body; the assessment of specialist competence; the relationship between specialist accreditation and continuing professional development; and the economic and professional culture dimensions of specialization in the Bangladeshi legal market.

Part Eight will develop the professional doctoral program for Bangladesh's legal profession, covering the SJD or LLD degree design, curriculum, supervision, assessment, and governance; the relationship between the professional doctorate and legal scholarship; and the leadership development function of doctoral legal education.

Parts Nine through Twelve will address personal law reform, transitional justice, the court system and procedural reform, and the future of Bangladeshi law in the global legal order.

PART SEVEN: THE SPECIALIST ACCREDITATION FRAMEWORK FOR THE BANGLADESHI LEGAL PROFESSION

PREFACE TO PART SEVEN

The argument that this textbook has been building since Part One reaches, in Part Seven, one of its most practically significant institutional expressions. The preceding parts established the

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historical foundations of Bangladeshi law, documented the catastrophic failures of the current legal education system, traced the philosophical and jurisprudential traditions that should inform reform, developed the curriculum architecture for a transformed LLB program, analyzed the Bar Council in its political and institutional dimensions, and proposed a comprehensive clinical legal education framework grounded in access to justice principles. Each of those analyses pointed, in one way or another, toward a conclusion that this Part now addresses directly: that the legal profession of Bangladesh needs not only better entry standards and better legal education, but also a sophisticated and credible system for recognizing and certifying expertise once lawyers have entered practice.

Specialization is not a luxury. In a legal environment of extraordinary complexity, in a country where commercial transactions involve multiple jurisdictions, where environmental cases require the integration of scientific evidence with constitutional principles, where family law sits at the intersection of Islamic jurisprudence and statutory reform, where criminal defense requires mastery of both procedural law and forensic science, and where the protection of digital rights demands understanding of technology law that did not exist two decades ago, the generalist lawyer who claims competence in everything is increasingly a danger to the clients who trust that claim. The specialist lawyer who has demonstrated, through rigorous assessment against defined standards, genuine expertise in a particular field of practice is not merely a credential holder. She or he is a practitioner whose competence has been tested, whose knowledge has been verified, and whose ongoing professional development is monitored and enforced. The client who finds a specialist accredited practitioner is in a fundamentally better position than the client who must rely entirely on the claims of a self-described expert who has never been tested in any systematic way.

This Part develops the complete institutional architecture of a specialist accreditation framework for Bangladesh. It does not take the shortcut of proposing a simple transplant of any existing foreign system. The Australian specialist accreditation programs, the American Board certification systems, the English and Welsh panel systems for legal aid specialists, and the emerging Indian approaches to specialist recognition all contain valuable lessons, but none of them was designed for Bangladesh, and none of them can simply be imported without the kind of serious contextual adaptation that this commentary has urged throughout. The framework proposed here is drawn from these comparative models while being rooted in the specific conditions, needs, traditions, and reform aspirations of Bangladesh.

The reader who has followed the argument through the previous Parts will recognize certain recurring themes: the emphasis on genuine competence over formal credentialism, the insistence on institutional independence from both political interference and the organized profession's tendency toward self-protection, the concern with access to justice and the distribution of legal services throughout Bangladesh rather than their concentration in Dhaka, the importance of Islamic jurisprudential principles as a resource for legal reform rather than an obstacle to it, and the conviction that reform must be theoretically coherent rather than merely pragmatic. These themes animate Part Seven as they have animated the preceding Parts. They are not incidental features of a particular argumentative style but expressions of a jurisprudential philosophy that takes seriously both the complexity of law and the human stakes of legal practice.

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CHAPTER SIXTY-ONE: THE PHILOSOPHY OF LEGAL SPECIALIZATION

Section 61.1: What Specialization Means and Why It Matters

Legal specialization, as a concept, operates simultaneously on several levels that must be distinguished carefully before any institutional framework can be designed. At the most basic descriptive level, specialization simply refers to the concentration of a lawyer's practice in a particular area or cluster of related areas. This descriptive sense is uncontroversial: virtually all lawyers who practice for any significant period of time end up concentrating their work in certain areas, whether by deliberate choice, by the demands of their client base, or by the practical reality that developing expertise in any area requires the repeated engagement with its problems that generalist practice does not allow. In this descriptive sense, specialization is a sociological fact about legal practice in all developed legal systems, not a regulatory category.

At the normative level, specialization raises the question of what it means for a lawyer to be genuinely expert in a particular field. This question is more difficult than it might appear. Law, unlike medicine, does not have stable disciplines defined by anatomical boundaries or pathological categories. Legal fields are constructs, defined by the intersection of substantive legal doctrine, procedural rules, social problems, and professional convention. Commercial law, as practiced in Bangladesh's High Court Division, overlaps with company law, contract law, banking and finance law, and occasionally with constitutional law when regulatory challenges arise. Environmental law draws on administrative law, constitutional law, tort law, international environmental agreements, and scientific evidence. Family law in Bangladesh sits at the intersection of Islamic personal law, the secular Family Courts Ordinance 1985, the Child Marriage Restraint Act 2017, the Guardians and Wards Act 1890, and the developing constitutional jurisprudence on women's rights. Defining the boundaries of any legal specialty is therefore not a simple matter of classification; it is an exercise in institutional design that has real consequences for what kind of knowledge is assessed and what kind of expertise is recognized.

At the political level, specialization is implicated in questions about the organization of the legal profession, access to legal services, and the economics of legal practice. Critics of specialization argue that it threatens to fragment the bar, to create hierarchies of prestige and income that disadvantage practitioners who work in less glamorous areas, to reduce access to legal services in areas where specialist practitioners are concentrated in major cities, and to create barriers to entry that protect established practitioners from competition. Defenders of specialization argue that it improves the quality of legal services, enables clients to make more informed choices about their legal representatives, promotes the systematic development of legal knowledge, and creates incentives for lawyers to invest in ongoing learning. These political arguments about specialization are not merely matters of professional interest; they connect to fundamental questions about the organization of a learned profession in a democratic society, and they will be examined in this Part with the seriousness they deserve.

The jurisprudential level of the specialization question is perhaps the least commonly discussed but in some respects the most important. What is the relationship between specialization and the

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nature of legal knowledge? Is law a unified discipline with a common method, in which case specialization is merely a practical adaptation to the volume of legal material, or are different legal fields genuinely different in their methods, their epistemological assumptions, and their intellectual demands? The answer to this question has significant implications for how specialist education, assessment, and accreditation are designed.

Ronald Dworkin, in Law's Empire and elsewhere, argued that law is a fundamentally interpretive enterprise, that legal reasoning in every domain involves the same basic skill of constructing the best interpretation of a body of legal material as a coherent and principled whole. On a strong Dworkinian account, the specialist and the generalist are engaged in the same intellectual activity, and specialization is primarily a matter of becoming familiar with a particular body of material rather than acquiring a fundamentally different kind of intellectual capability. H.L.A. Hart's positivist account, which describes law as a system of rules identified by a rule of recognition, similarly suggests that legal reasoning is methodologically uniform across fields, even if the substantive rules differ. Neil MacCormick's more nuanced account of legal reasoning as involving both deductive application of rules and second-order argumentation about the relevant principles and consequences, captures both the unity of legal method and the real differences that exist between fields in the weight given to different forms of argument.

Against these accounts of legal reasoning's unity, the sociology of legal knowledge suggests that different fields of law involve not merely different rules but genuinely different epistemic communities, different standards of expertise, different relationships to extra-legal knowledge, and different forms of practical wisdom. Environmental law requires an understanding of ecology and toxicology that a purely doctrinal training does not provide. Medical law requires an understanding of clinical practice and bioethics that goes beyond the legal texts. Financial regulation requires mastery of accounting principles, financial instruments, and market dynamics. Tax law requires expertise in economics and fiscal policy as well as the technical statutory provisions. The specialist in any of these fields is not merely someone who knows more legal rules in a particular area; she or he is someone who has developed an integrated understanding of a field that draws together legal doctrine, empirical knowledge, and practical wisdom in ways that the generalist simply cannot replicate without sustained engagement with that specific domain.

This analysis suggests that the philosophy of specialization must hold together two truths that are sometimes treated as contradictory. Legal reasoning does have a common method and a common commitment to principled argument from authority, precedent, and principle. But the application of that method in different domains requires different bodies of substantive knowledge, different relationships to extra-legal disciplines, and different forms of practical experience. Specialist accreditation should therefore assess both the general qualities of excellent lawyering, including analytical rigor, ethical integrity, communication skills, and professional judgment, and the domain-specific knowledge, skills, and experience that distinguish genuine expertise in a particular field.

Section 61.2: The Liberal Tradition and the Limits of General Practice

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The tradition of the learned general practitioner, the lawyer who advises on everything from a neighbor's boundary dispute to a corporate merger, has deep roots in the common law tradition. The Inns of Court tradition in England, which produced the common law's characteristic figure of the barrister as a generalist advocate who could be briefed on any case and who brought a common method of advocacy and legal reasoning to every matter, embodied a particular philosophy of legal education and professional formation. The barrister was trained not in any particular body of law but in legal reasoning as such, in advocacy, in the analysis of evidence, and in the traditions of professional conduct. The law that mattered in a particular case would be researched and mastered for that case, but the professional skills were universal.

This tradition has genuine virtues. The generalist lawyer brings to every case a detachment from the specialized knowledge and assumptions of any particular field, which can sometimes enable her or him to see arguments and analogies that a specialist, too deeply immersed in the conventional wisdom of a field, might miss. The generalist lawyer's practice of moving between fields keeps the common law's fundamental unity in view, preventing the fragmentation of legal knowledge into a series of isolated specialisms that lose sight of their relationship to the broader legal order. The generalist tradition is also democratically significant: the lawyer who can advise a rural farmer on his land dispute as competently as she advises a Dhaka corporation on its commercial contract is a professional asset in a country where legal services are desperately needed in areas far from the capital.

But the virtues of the generalist tradition are increasingly compromised by the realities of contemporary law. The volume of legal material has increased at a rate that makes comprehensive mastery across fields impossible. The Companies Act 1994, the Securities and Exchange Ordinance 1969 and its subsequent amendments, the Financial Institutions Act 1993, the Bank Company Act 1991, the Bankruptcy Act 1997, the Arbitration Act 2001, and the numerous regulations issued under these statutes together constitute a body of commercial law that would require sustained professional engagement to master. The environmental law framework, including the Environment Conservation Act 1995, the Environment Court Act 2000, the Environment Conservation Rules 1997, and the substantial body of PIL jurisprudence developed by the High Court Division, represents a similarly demanding body of material. Labour law, tax law, intellectual property law, telecommunications regulation, and the emerging framework of digital law each constitute complex and rapidly evolving fields that reward specialization and punish superficial engagement.

The specific context of Bangladesh adds additional dimensions to this argument. The legal system of Bangladesh is undergoing a period of intense legislative activity as the country continues to develop and as the reform aspirations of the post-2024 political transition are translated into legislative proposals. The Cyber Security Act controversies, the proposed data protection legislation, the ongoing reform of family law, the potential reform of the Penal Code, and the reconstruction of regulatory frameworks across multiple sectors are all creating new legal territory that requires careful specialist navigation. The lawyer who attempts to practice across all of these areas simultaneously is not serving her or his clients well; she or he is spreading attention and energy so thinly that genuine expertise in any area becomes impossible.

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The liberal philosophy that justified the general practice tradition was rooted in a particular historical moment when the volume of law was manageable, when the social problems that law addressed were relatively limited in their technical complexity, and when the dominant model of legal services was the individual or small-firm practitioner serving a community of clients with routine needs. That moment has passed everywhere, and in Bangladesh it has passed with particular force given the speed of legal development since independence. A reform agenda that is intellectually honest about this reality cannot simply affirm the tradition of general practice as if the conditions that gave it meaning still obtain. It must develop a framework for specialist recognition that retains the general practitioner's commitment to accessibility and breadth while honestly acknowledging that the delivery of genuinely competent legal services in many areas now requires demonstrated specialist expertise.

Section 61.3: Jurisprudential Frameworks for Expertise and Accountability

The jurisprudential analysis of professional expertise has been enriched in recent decades by several theoretical frameworks that are directly relevant to the design of a specialist accreditation system. Three frameworks deserve particular attention: the capabilities approach, discourse theory, and the professional responsibility tradition.

Martha Nussbaum and Amartya Sen's capabilities approach, which was discussed in Part Three of this commentary in the context of legal education philosophy, has direct application to the question of specialist expertise. On the capabilities approach, the relevant question about any professional arrangement is not merely whether it satisfies formal criteria of legitimacy but whether it actually develops and deploys the capabilities that people need to live flourishing lives. Applied to legal specialization, this framework asks whether specialist accreditation genuinely develops the capabilities that lawyers need to serve their clients excellently, or whether it is primarily a credentialing exercise that creates formal distinctions without substantive differences in the quality of legal service. A capabilities-based evaluation of specialist accreditation would focus on whether the assessment process genuinely tests the capabilities that matter for excellent specialist practice, whether the ongoing CPD requirements genuinely maintain and develop those capabilities, and whether the distribution of specialist practitioners across Bangladesh actually reaches the communities that need specialist legal services.

Jürgen Habermas's discourse theory, which grounds legitimate norms in the idealized procedures of rational discourse rather than in any substantive philosophical foundation, suggests that the legitimacy of a specialist accreditation framework depends critically on the procedures by which it is designed and maintained. If the standards for specialist accreditation are established through processes that exclude the voices of clients, junior lawyers, lawyers from outside Dhaka, and other stakeholders whose interests are affected by the accreditation system, the resulting standards will be shaped by the interests of those who dominated the design process rather than by the public interest. The discourse-theoretic approach therefore requires that the design of the specialist accreditation framework involve genuine deliberation among a broad range of stakeholders, that the criteria and standards be transparent and publicly defensible, and that the mechanisms for challenging decisions be accessible and fair.

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The professional responsibility tradition in Anglo-American jurisprudence, associated with scholars like Richard Wasserstrom, David Luban, William Simon, and in the Bangladesh context with scholars like Ridwanul Hoque and Shahdeen Malik, grounds the obligations of the legal profession in the special social role that lawyers play in a system of justice. On this account, lawyers are not simply service providers who sell legal services to whoever can afford them; they are participants in the administration of justice whose professional obligations derive from the importance of justice to a democratic society. This tradition generates a particular understanding of specialist expertise: the specialist lawyer's expertise is not merely a private possession that can be used or withheld according to market logic, but a professional resource that carries obligations of accessibility, of integrity, and of public service that derive from the social purpose of the legal profession.

The Islamic jurisprudential tradition contributes its own framework for thinking about professional expertise and accountability. The concept of amanah, trust or trusteeship, which is a foundational concept in Islamic ethics, applies directly to the relationship between the specialist lawyer and the client who trusts her or his expertise. The specialist who represents expertise she or he does not genuinely possess betrays the trust placed in the legal profession as a whole. The concept of ihsan, excellence or benevolence in one's actions, requires that the professional go beyond mere technical compliance with standards to genuine excellence in service. And the concept of maslaha, public welfare, requires that the organization of the legal profession, including the structure of specialization, be oriented toward the benefit of society rather than toward the private interests of established practitioners.

These theoretical frameworks converge on a set of normative requirements for a legitimate specialist accreditation system. The system must be genuinely competence-based rather than primarily exclusionary. It must be designed through inclusive and transparent processes. It must be maintained by ongoing accountability mechanisms that test whether accredited specialists continue to merit their designation. It must be oriented toward the public interest in the quality and accessibility of legal services rather than toward the professional interest in creating prestigious distinctions. And it must be evaluated empirically over time against the evidence of whether it actually improves the quality of legal services and advances access to justice.

CHAPTER SIXTY-TWO: THE HISTORICAL DEVELOPMENT OF LEGAL SPECIALIZATION

Section 62.1: Specialization in Pre-Colonial Bengal

The idea that legal expertise in particular fields requires particular training and recognition is not a modern Western invention. The classical Islamic jurisprudential tradition recognized specialized roles within the legal system that correspond in important ways to modern conceptions of specialization. The qadi, the Islamic judge, was not expected to be equally expert in all areas of Islamic law; the development of specialized advisory opinions by muftis, scholars who were recognized as expert in particular aspects of the Sharia, created a form of de facto specialization in which the generalist judge would seek the advice of the specialist scholar when

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cases raised technical questions in areas requiring deep expertise. The great Hanafi mufti tradition in Bengal, which produced figures of the caliber of Abdul Qadir al-Sufi and other scholars of the Sultanate and Mughal periods, represented a form of recognized specialist expertise whose authority derived from demonstrated mastery of the relevant texts and hermeneutical traditions.

The Dharmashastra tradition similarly involved specialized roles and specialized expertise. The pandits who advised British colonial courts on questions of Hindu law were not merely knowledgeable about Hindu texts in general; they were specialists in particular schools of interpretation, in particular regions' customary variations, and in the application of particular areas of the dharmashastra to specific types of disputes. The Dayabhaga school's distinctive treatment of inheritance law in Bengal was maintained by a tradition of specialized scholarly expertise that the British colonial administration both relied upon and, in the process of codification, ultimately undermined.

The colonial legal system that replaced these traditions created its own forms of specialization, though not through any formal accreditation system. The vakils and barristers who practiced before the Calcutta High Court in the nineteenth century quickly developed reputations in particular areas of practice. Some became known for their expertise in criminal cases, others for their mastery of civil procedure, others for their command of land law. This informal specialization was recognized by clients and by the courts, but it was never formalized in any institutional structure. The bar was organized as a general practice profession, with common entry standards and common ethical rules, even as the practical reality of practice increasingly involved substantial concentration in particular areas.

The independence of Pakistan in 1947 and of Bangladesh in 1971 inherited this tradition of informal specialization without formal recognition. The Bangladesh Bar Council, established by the Legal Practitioners and Bar Council Order of 1972, was conceived as a regulatory body for a general profession. Its enrollment examination was designed to test general competence across several core areas of law, not specialized expertise in any particular field. Its Continuing Legal Education requirements, to the extent they existed at all, did not differentiate between areas of practice. The entire framework was predicated on the assumption that legal practice was a general craft, and that the lawyer who passed the enrollment examination was competent to practice across all its dimensions.

The inadequacy of this framework has become increasingly apparent as the complexity of Bangladeshi law has grown and as the stakes of legal practice have risen. The lawyer who handles a pharmaceutical company's intellectual property litigation without specialist expertise in patent law, the lawyer who advises on a BOT infrastructure contract without specialist expertise in project finance, the lawyer who represents an environmental NGO in a PIL petition without specialist expertise in environmental law and administrative procedure, and the lawyer who conducts a family law case without specialist expertise in Islamic personal law and the Family Courts Ordinance are all practicing in ways that fall below the standard of care that their clients deserve. The current system has no mechanism for identifying these inadequacies systematically, no way for clients to distinguish the genuine specialist from the self-described expert, and no

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incentive structure that rewards the investment in genuine specialist expertise over the returns from superficial general practice.

Section 62.2: The Development of Specialization in the Anglo-American World

The formal development of specialist accreditation in common law systems is a relatively recent phenomenon, emerging primarily in the second half of the twentieth century in response to the increasing complexity and specialization of legal practice. The story of how different common law systems addressed this challenge provides both valuable models and important cautionary lessons for Bangladesh.

In the United States, the development of specialist certification began in the 1970s when several state bars established voluntary certification programs in particular fields. Texas was an early pioneer, establishing a Board of Legal Specialization in 1974 that offered certification in criminal law, family law, and personal injury law. Other states followed, and by the 1990s most American states had some form of specialist certification available in at least some fields. At the national level, the American Bar Association established its National Board of Legal Specialty Certification in 1977 to accredit state and specialty certification organizations, creating a meta-regulatory framework that sought to ensure consistency and quality in the growing array of certification programs. By 2025, specialist certification programs existed in dozens of areas of law across the United States, covering everything from bankruptcy law to immigration law, from sports and entertainment law to elder law.

The American model is notable for several features. It is, in the main, voluntary: lawyers are not required to obtain specialist certification to practice in any field, but those who obtain certification are entitled to represent themselves as specialists in ways that non-certified lawyers cannot. Certification is typically administered by state bar organizations or by independent nonprofit organizations approved by the ABA, not by the courts or by state legislatures. The assessment process typically involves a combination of a written examination, peer review references, a demonstration of substantial experience in the relevant field over a defined period, and a commitment to ongoing continuing education in the specialty. Recertification is required periodically, ensuring that the specialist's designation reflects ongoing competence rather than merely a historical achievement.

The American model's limitations are also instructive. The voluntary character of certification means that many excellent specialist practitioners have not pursued certification, either because the cost and time commitment are significant or because the market advantages of certification are not always clear in practice. The proliferation of certification programs, some of which are administered by private organizations with commercial interests in increasing the number of certified specialists, has raised concerns about whether all certification programs maintain genuinely rigorous standards. The concentration of certified specialists in major metropolitan areas and the underrepresentation of specialists serving rural and low-income clients reflects broader patterns of inequality in the American legal services market that specialist certification has not, on its own, addressed.

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The Australian specialist accreditation model, which has developed since the late 1980s and has been refined continuously since then, represents a different approach. In New South Wales, the Law Society of NSW operates the Specialist Accreditation Program, which by 2025 and 2026 offered accreditation in areas including Business Law, Commercial Litigation, Criminal Law, Family Law, Property Law, Wills and Estates, Children's Law, Dispute Resolution, Elder Law, Employment and Industrial Law, Family Law, Immigration Law, Personal Injury Law, and Planning and Environment. The NSW program is administered by the Law Society rather than by the court system, but operates under regulatory oversight by the Legal Profession Uniform Law framework that applies across New South Wales and Victoria. The assessment process involves a written examination, a portfolio demonstrating substantial experience in the relevant field, referee reports from practitioners who can attest to the applicant's expertise, and ongoing CPD requirements specific to the specialty.

The NSW program is notable for the August 2025 Specialist Accreditation Conference at which Chief Justice Andrew Bell of the New South Wales Court of Appeal spoke, emphasizing the importance of specialist accreditation in allowing practitioners to hold themselves out as specialists in particular areas of practice and underscoring the ongoing obligations that accreditation carries. This high-level judicial engagement with specialist accreditation signals the degree to which the program has become integrated into the professional culture of the NSW bar and an accepted part of the landscape of legal services in Australia's largest state.

Queensland's specialist accreditation program, administered by the Queensland Law Society, operates on a similar model but with different program cycles. The 2026 program's application window of October to November 2025, with notification of acceptance in mid-to-late December, illustrates the year-round institutional infrastructure that a well-functioning specialist accreditation system requires. The diversity of the Australian state programs, each adapted to local conditions and professional culture while operating within a national framework of professional regulation, offers a model for how Bangladesh could develop a specialist accreditation framework that responds to national standards while accommodating the significant regional variations in legal practice across the country.

The English and Welsh approach to specialist recognition has developed primarily through the Legal Aid framework rather than through a purely professional certification system. The Solicitors Regulation Authority and the Bar Standards Board in England and Wales have not created a comprehensive specialist accreditation system comparable to the Australian model. Instead, specialist recognition in England and Wales has developed through the Legal Aid Agency's panel systems, which recognize specialists in criminal defense, mental health, housing, and other areas as eligible to take legal aid cases in those fields, and through specialist sections of the Law Society that provide informal recognition of expertise without formal accreditation. The Criminal Defence Service's quality standards and the various legal aid panel accreditation requirements have effectively created a de facto specialist certification system for publicly funded work, even though no comprehensive formal specialist accreditation system exists for private practice.

The English experience illustrates an important point: specialist recognition can develop through regulatory necessity even in the absence of a comprehensive professional certification program.

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When public funding of legal services requires quality assurance, and when quality assurance requires demonstration of specialist expertise, a form of specialist certification inevitably develops as a regulatory instrument. Bangladesh's legal aid system, which is at an early stage of development, could learn from the English experience by building quality standards, including specialist expertise requirements, into the framework of publicly funded legal services from the beginning rather than attempting to retrofit them later.

Section 62.3: The Indian Experience and Its Lessons

India does not have a comprehensive formal specialist accreditation system comparable to the Australian or American models, but the development of specialization in Indian legal practice offers several lessons that are directly relevant to Bangladesh. The Bar Council of India, established under the Advocates Act 1961, which is the direct model for Bangladesh's Bar Council Order of 1972, regulates the legal profession through a general enrollment system without formal specialist recognition. However, several developments in the Indian legal landscape are relevant to the Bangladesh reform agenda.

The development of specialized tribunals in India, including the National Company Law Tribunal, the Debt Recovery Tribunals, the National Green Tribunal, the Competition Appellate Tribunal, and numerous other specialized adjudicative bodies, has created de facto pressure for specialization. Lawyers who practice before these tribunals must develop expertise in the specialized substantive and procedural law that governs their proceedings. The National Green Tribunal in particular has created a community of environmental law practitioners whose expertise rivals or exceeds that of environmental lawyers in many developed countries. While the Bar Council of India has not formally recognized these practitioners as specialists, the practical differentiation of the profession has proceeded apace.

The development of elite commercial chambers and law firms in Mumbai and Delhi, operating in the capital markets, mergers and acquisitions, and international arbitration sectors, has created informal specialist communities whose expertise is recognized in the market even without formal accreditation. The emergence of India as a significant international arbitration seat, with Mumbai International Arbitration Centre and Delhi International Arbitration Centre both active and growing, has created demand for arbitration specialists whose expertise is recognizable to international clients. The Indian arbitration bar, centered in Mumbai and Delhi but with significant presences in other cities, operates as an informal specialist community with shared knowledge, shared norms, and shared international connections that are the functional equivalent of specialist accreditation.

The Law Commission of India's reports, particularly the 2020 reports on legal education reform, have touched on the question of specialization within legal education, calling for the development of specialized programs at the LLM level and for the reform of the LLM degree to provide genuine specialist training rather than the general postgraduate courses that have historically characterized Indian legal education. These proposals parallel the reforms proposed in Parts Three and Four of this commentary for Bangladesh, and their development in India provides a comparative reference point for the implementation challenges that Bangladesh will face.

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The most important lesson from the Indian experience, however, is negative: the absence of a formal specialist accreditation system has not prevented the development of informal hierarchies of expertise and prestige within the legal profession, but it has prevented those hierarchies from serving the public interest in legal service quality in any systematic way. The informal recognition of expertise that operates through professional reputation, through elite bar and firm membership, and through the choice of tribunal specialists, benefits primarily those who are already well-connected within the professional network. It is systematically inaccessible to lawyers from smaller cities and districts, to women who are disproportionately excluded from elite professional networks, to lawyers from economically disadvantaged backgrounds who lack access to the mentorship networks through which informal specialist recognition develops, and to clients who lack the sophistication to navigate informal networks of professional reputation. The formal specialist accreditation framework proposed in this Part is designed precisely to address these distributive failures of informal specialization.

CHAPTER SIXTY-THREE: THE ECONOMIC AND PROFESSIONAL CULTURE OF SPECIALIZATION IN BANGLADESH

Section 63.1: The Market for Legal Services and the Economics of Expertise

Any serious proposal for specialist accreditation in Bangladesh must grapple honestly with the economics of legal practice in the country, because the economic viability of specialization is a necessary condition for its development and sustainability. The economics of the Bangladeshi legal services market are complex, and any reform proposal that ignores them will fail regardless of its institutional elegance.

The Bangladeshi legal services market is deeply segmented. At the top end, a small number of commercial law firms in Dhaka, some of them emerging law firms with international connections and some of them the traditional chambers of senior advocates, serve the corporate and financial sector with fees that approach international rates. The clients of these firms, who include multinational corporations, international financial institutions, and the larger domestic companies, can afford to pay for specialist expertise and have the sophistication to demand it. Below this tier, a large middle segment of the market serves the needs of the business community, the middle class, and individuals with significant legal needs, at fees that reflect the competitive pressure of a profession in which supply greatly exceeds demand. At the bottom of the market, the vast majority of Bangladesh's population, particularly in rural areas, cannot afford any formal legal services at all and relies on the shalish system, legal aid organizations, and the occasional NGO for whatever legal assistance they receive.

The economics of specialization interact with this market structure in complex ways. In the top tier of the market, specialization is already a de facto reality: the firms that serve major corporate clients have developed specialist expertise in commercial law, banking regulation, capital markets, and international arbitration because their clients demand it and because the fees they receive justify the investment in specialist knowledge. The formal specialist accreditation system proposed in this Part would validate and formalize this de facto specialization, making it legible

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to a wider range of clients and creating accountability mechanisms for the quality of specialist services that the current informal system does not provide.

In the middle tier of the market, the economics of specialization are more complicated. A lawyer practicing family law in a district town, handling divorce cases under the Muslim Family Laws Ordinance 1961, custody disputes under the Guardians and Wards Act 1890, and maintenance proceedings under the Family Courts Ordinance 1985, has specialized in a particular field even if she or he would not use that terminology. The question for specialist accreditation in this context is whether formal certification in family law would enable such a lawyer to differentiate her or his services effectively in a local market where clients may not understand the significance of specialist accreditation, and whether the investment in achieving and maintaining accreditation is justified by the likely financial return.

The answer to this question is not obvious, and the experiences of other countries are instructive. In Australia, research on the NSW Specialist Accreditation Program has found that specialist accreditation generates a premium in fees for accredited practitioners, with specialists typically earning significantly more than non-accredited practitioners in the same fields. This premium reflects both the market signal of accreditation, which clients use to identify practitioners who have demonstrated expertise, and the genuine competence advantage that the rigorous accreditation process confers. However, the premium is concentrated in urban markets where clients have sufficient sophistication to use the accreditation signal effectively; in rural markets, the premium is smaller and less reliable.

For Bangladesh, the implications are significant. The economic incentives for specialist accreditation will be most powerful in Dhaka, Chittagong, Sylhet, and other urban centers where clients have the sophistication and the resources to value formal specialist recognition. In district towns and rural areas, the incentive structure will need to be supplemented by other mechanisms, including requirements that publicly funded legal services be delivered by accredited specialists, professional norms that make specialist accreditation a mark of excellence within the local bar community, and educational programs that help clients understand the significance of specialist accreditation in choosing a legal representative.

Section 63.2: Professional Culture and the Resistance to Formalized Excellence

The political economy of specialist accreditation is complicated by the professional culture of the Bangladesh Bar, which has features that will generate resistance to any comprehensive specialist accreditation framework. Understanding these features is essential for designing a framework that can actually be implemented.

The Bangladesh Bar, at the district court level, is overwhelmingly composed of sole practitioners and small informal partnerships who have built their practices through personal relationships, family connections, community trust, and the accumulated reputation that comes from years of visible practice in the local court. These practitioners' professional identity is built around their general competence, their knowledge of the local courts and judges, their ability to handle whatever matter their clients bring to them, and their role as trusted community advisers. The proposal that they should submit themselves to a formal assessment of specialist expertise

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challenges this professional identity in ways that are likely to generate both sincere philosophical objections and self-interested resistance.

The philosophical objection deserves to be taken seriously rather than dismissed as mere self-interest. The generalist practitioner who has spent thirty years handling land disputes, family matters, and small commercial cases in a district town has developed a form of practical wisdom about law in that specific context that no written examination or portfolio assessment can fully capture. The knowledge of how the local courts actually operate, the practical judgment about when to settle and when to fight, the ability to navigate the informal as well as the formal dimensions of the legal system, the understanding of local social dynamics that affect how law is actually applied in practice: these are forms of expertise that specialist accreditation frameworks, designed primarily for the Dhaka commercial bar, may undervalue or fail to recognize.

This objection points to a genuine design challenge for the specialist accreditation framework: how to develop a system that recognizes and validates genuine specialist expertise in all fields of practice, including those fields, like rural land law and general district court litigation, that are less glamorous than commercial law or constitutional litigation but are equally important for the majority of Bangladesh's population. A specialist accreditation framework that only covers the high-prestige fields of commercial law, intellectual property, and international arbitration will serve the interests of the urban commercial elite while leaving the vast majority of the bar untouched and the vast majority of clients underserved.

The self-interested resistance to specialist accreditation comes from a different direction. Established practitioners who have built reputations as generalists over many years have a financial interest in a system that does not require formal demonstration of expertise. A specialist accreditation system that actually had teeth, that actually restricted the ability of non-accredited practitioners to claim specialist expertise, and that actually enabled clients to distinguish the genuine specialist from the self-described expert, would threaten the market position of established practitioners who have claimed specialist status without formal assessment. The history of professional regulation in Bangladesh, as this commentary has documented in earlier parts, shows a persistent tendency for reform proposals to be captured by established professional interests and redesigned in ways that protect incumbents while excluding new entrants. A specialist accreditation framework must be designed with this risk explicitly in view.

The reform moment of 2024 and 2025 in Bangladesh, following the political transition that ended the Hasina era, provides an unusual opportunity to design professional regulation in ways that serve the public interest rather than established professional interests. The Judicial Reform Roadmap announced by Chief Justice Syed Refaat Ahmed in September 2024, the reforms to the Legal Aid Act announced in 2025, and the broader agenda of institutional reconstruction that characterizes the current period, all create an environment in which the reform of professional regulation can be addressed alongside the reform of courts, legal education, and the Bar Council itself. This window of opportunity is likely to be limited: as normal political pressures reassert themselves, the capture of reform processes by professional interests will intensify. The specialist accreditation framework proposed in this Part should therefore be designed for rapid initial implementation, with the most critical elements established while the reform momentum is strong.

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Section 63.3: The Feminist Political Economy of Specialization

Any analysis of the professional culture of the Bangladesh Bar that ignores the gender dimension is seriously incomplete. The Bangladeshi legal profession remains overwhelmingly male at all levels of seniority, and the mechanisms through which professional hierarchies are reproduced are deeply gendered. The informal networks of mentorship, the late-night working cultures, the social practices of the bar room, and the expectations about professional availability and client entertainment that characterize much of the Bangladesh Bar are all organized around assumptions about professional life that disadvantage women systematically.

The specialist accreditation framework proposed in this Part has the potential either to reinforce these gendered hierarchies or to challenge them, depending on how it is designed. A specialist accreditation system that privileges the kinds of experience accumulated through the informal networks that men dominate, that assesses expertise through examination formats that have historically been shown to disadvantage women, and that concentrates specialist recognition in the high-prestige fields in which women are most systematically underrepresented, will deepen rather than reduce gender inequality in the profession.

A feminist approach to specialist accreditation, drawing on the work of scholars like Catharine MacKinnon, Carol Gilligan, and in the South Asian context Ratna Kapur and Flavia Agnes, would require several specific design choices. The experience requirements for specialist accreditation should take account of the reality that women practitioners are more likely than men to have had interrupted or part-time careers due to family responsibilities, and should not penalize this pattern of practice. The assessment formats should include portfolio assessment and peer review alongside written examination, since portfolio assessment captures the full range of a practitioner's work in ways that may be more favorable to women whose practice patterns differ from the male norm. The definition of specialty fields should include family law, gender-based violence law, and other fields in which women practitioners are disproportionately represented, giving formal recognition to expertise that is currently undervalued in the market. And the governance of the specialist accreditation body should include gender parity requirements to ensure that women practitioners have a voice in the design and administration of the system.

The feminist analysis of specialization also raises questions about which fields are designated as specialties and which are treated as general practice. Commercial law, intellectual property, and international arbitration are high-prestige fields associated with lucrative corporate practice; their designation as specialties has the effect of formally recognizing and rewarding expertise that is already well-compensated. Family law, gender-based violence, and the legal problems of rural women are lower-prestige fields that are critical for access to justice but less well-compensated in the market. A comprehensive specialist accreditation framework that includes all of these fields, and that works actively to raise the status and compensation of specialists in the fields where women and disadvantaged communities are most in need of excellent legal services, would make a genuine contribution to both professional gender equity and access to justice.

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Section 64.1: The American Board Certification System

The American Board of Legal Specialty Certification (ABLSC) represents the most mature and comprehensive framework for specialist certification in any common law country, and its design features deserve detailed analysis before any Bangladeshi framework is proposed. Understanding both the strengths and the limitations of the American system is essential for an intelligent adaptation.

The ABLSC, established in 1977 and operating under the auspices of the American Bar Association, does not itself certify lawyers; rather, it accredits the organizations that run certification programs, ensuring that these organizations meet minimum standards of rigor and accountability. This two-tier structure, in which a meta-regulatory body sets standards for certification programs and individual programs are administered by specialized organizations, reflects the decentralized structure of the American legal profession, in which regulation is primarily state-based rather than national. The result is a system of considerable diversity and flexibility, with different programs using different assessment methods, different experience requirements, and different recertification cycles, all within a common framework of minimum standards set by the ABLSC.

The Texas Board of Legal Specialization, one of the oldest and most respected of the American certification programs, offers certification in eighteen areas of law including Civil Appellate Law, Civil Trial Law, Commercial Real Estate Law, Criminal Law, Criminal Defense Law, Estate Planning and Probate Law, Family Law, Immigration and Nationality Law, Juvenile Law, Labor and Employment Law, Oil, Gas, and Mineral Law, Personal Injury Trial Law, Residential Real Estate Law, Tax Law, and Workers' Compensation Law. Each of these certification areas has its own examination, its own experience requirements, its own peer review process, and its own continuing education obligations. The Texas model illustrates both the breadth of fields that a mature specialist certification system can cover and the institutional infrastructure required to maintain it: dedicated examination development, psychometric analysis of examination questions, administrative processes for managing applications and renewals, and governance structures that involve both certified practitioners and lay members.

The Florida Bar's specialist certification program, which covers twenty-six areas of law and is administered by the Florida Bar directly rather than by a separate board, illustrates a different institutional model. In Florida, the certification program is embedded within the state bar's organizational structure, with specialist certification committees for each area of law composed of certified practitioners who develop examination questions, review portfolios, and conduct oral examinations of certification candidates. The oral examination component, which Florida uses for certain specialties, is particularly valuable because it tests not just whether the candidate knows the right answer but whether she or he can reason through a novel problem in real time, explaining and defending her or his analysis in response to questioning by experienced specialists.

The peer review component of American specialist certification deserves particular attention. Most American certification programs require candidates to obtain peer references from other practitioners who can attest to their competence in the relevant field. These references are not

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merely character references; they are substantive assessments of the candidate's legal skills, professional judgment, and ethical conduct as observed in practice. The peer review process introduces a dimension of assessment that written examinations cannot provide: the evaluation of how a practitioner actually performs in the contexts of real legal work. The practical challenge of peer review is that it can reinforce existing professional networks and disadvantage candidates who are not well-connected within the profession. Designing peer review processes that are both substantive and fair is one of the most challenging aspects of specialist accreditation system design.

The continuing certification (recertification) requirements of American specialist certification programs ensure that the specialist designation remains meaningful over time rather than becoming merely an historical achievement. Most programs require certified specialists to demonstrate a minimum level of ongoing practice in the relevant field, to complete a significant number of continuing education hours specifically related to the specialty, and to satisfy peer review requirements periodically. The recertification cycle varies from five to seven years across different programs. The rigorous recertification requirements distinguish genuine specialist certification from the kind of once-and-for-all credentialing that creates an artificial hierarchy without actually monitoring ongoing competence.

The limitations of the American system are also instructive. The voluntary character of certification, combined with the costs and time demands of the certification process, means that many excellent practitioners in the United States have never pursued certification. Research consistently shows that certified specialists are not uniformly superior to uncertified practitioners in the same fields; the certification process selects for practitioners who are well-established in their specialty, well-connected in professional networks, and willing and able to invest significant time and resources in the certification process, but these qualities do not always correlate perfectly with legal excellence. The American system also shows significant concentration in major metropolitan areas and in the most lucrative practice fields, with certification underutilized in smaller markets and in public interest fields where the financial returns do not justify the certification investment.

Section 64.2: The Australian Model in Depth

The Law Society of New South Wales Specialist Accreditation Program, which as noted operated in 2025 with accreditation available in multiple areas and expanded to new areas in 2026, provides the most detailed and accessible model for study because of the program's transparency and the availability of its assessment materials for public review. The NSW program's Guide to Application and Assessment, published for the 2025 program, describes in detail the criteria, process, and assessment methodology that the program uses, and this level of transparency is itself a design feature that the Bangladesh framework should emulate.

The NSW program's eligibility criteria for specialist accreditation require practitioners to be admitted to practice in New South Wales, to have been in active practice for at least five years since admission, to have devoted at least twenty-five percent of their practice time to the relevant specialty field during the five years prior to application, and to provide references from at least three Australian legal practitioners who can attest to their competence in the specialty field.

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These criteria set a significant baseline of practical experience as a prerequisite for specialist assessment, ensuring that the accreditation process assesses demonstrated expertise in practice rather than merely theoretical knowledge.

The assessment process itself is multi-stage. Candidates must pass a written examination that tests specialist knowledge across a broad range of topics within the relevant field. The written examination is followed by a portfolio requirement in which candidates submit samples of their specialist work product, demonstrating the quality and breadth of their practice in the field. In some specialty areas, the assessment also includes an oral component in which candidates discuss their portfolio and respond to hypothetical questions posed by experienced specialists. The multiple forms of assessment, each testing different dimensions of specialist competence, create a more robust and valid evaluation than any single assessment method could provide.

The NSW program's governance includes Advisory Committees for each specialty area, composed of practitioners accredited in that area, who develop examination content, assess portfolios, and conduct oral examinations. The Advisory Committees are supported by the Law Society's professional staff, who manage the administrative dimensions of the program and provide psychometric analysis of examination results to ensure fairness and validity. The Advisory Committee model has the advantage of ensuring that assessment is conducted by genuine practitioners with current expertise in the relevant field, but it also creates risks of insularity and self-protection that the Law Society's oversight role and the involvement of lay members in governance are designed to mitigate.

Chief Justice Bell's speech at the 2025 Specialist Accreditation Conference emphasized that specialist accreditation carries ongoing obligations, not merely the obligation to meet recertification requirements but the broader professional obligation to maintain and deploy the expertise that the accreditation certifies. This framing of accreditation as carrying ongoing professional responsibility, not merely conferring a credential, is jurisprudentially significant: it grounds specialist accreditation in the ethics of professional responsibility rather than in the economics of credential signaling. The Bangladesh framework should explicitly adopt this framing, making clear from the outset that specialist accreditation is not merely a qualification but a professional commitment to excellence and accountability in a particular field.

The Queensland Law Society program, which opens applications for its 2026 cycle in October and November 2025 with notifications in December, illustrates the year-round administrative cycle that a well-functioning specialist accreditation system requires. The administrative infrastructure for managing applications, communicating with candidates, administering examinations, processing portfolios, and making and communicating decisions about accreditation is substantial and must be resourced adequately from the outset. The temptation to underresource the administrative infrastructure of a new accreditation program, in the interest of minimizing costs, is a common failure mode that produces administrative dysfunction, candidate frustration, and ultimately a loss of confidence in the program's integrity.

Section 64.3: The English Panel System and Its Implications

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England and Wales present a different model of specialist recognition, one that has developed primarily through the publicly funded legal services sector rather than through a comprehensive professional certification program. The Legal Aid Agency's panel systems, which govern eligibility to conduct publicly funded work in specific fields, have effectively created a tiered system of specialist recognition in criminal defense, family law, housing, mental health, and other areas of publicly funded legal practice. The criminal defense panels, in particular, have become a significant quality standard: the Higher Courts Advocacy qualification required for higher courts criminal work, and the accreditation standards required for duty solicitor work, have created a form of de facto specialist certification in criminal defense that is recognized throughout the profession.

The Solicitors Regulation Authority's approach to quality assurance in England and Wales has increasingly moved toward outcome-based regulation rather than input-based credentialing. Rather than specifying what qualifications a solicitor must have to practice in particular fields, the SRA's regulatory framework focuses on outcomes: the obligation to deliver competent legal services, the obligation to act in the client's best interests, and the obligation to maintain the standards that the regulatory framework requires. The specialist accreditation system proposed in this Part draws on the English outcome-based approach in its insistence that specialist assessment should test the capability to deliver excellent legal services rather than merely the possession of relevant knowledge.

The Conveyancing Quality Scheme and the Law Society's Practice Quality Mark in England and Wales represent another dimension of the English approach to quality assurance: firm-level quality standards that operate alongside individual practitioner regulation. These firm-level quality schemes assess the management, supervision, and quality assurance systems of law firms rather than the individual competence of specific practitioners. The interaction between individual specialist accreditation and firm-level quality assurance is an important design question for the Bangladesh framework: should the specialist accreditation system focus entirely on individual practitioners, or should it also develop mechanisms for recognizing law firms and chambers that have developed robust specialist practice groups with appropriate supervision and quality management systems?

The Lexcel standard in England and Wales, which is a law practice management standard that covers management structure, supervisory arrangements, case management, and client care, provides a model for firm-level quality assurance that could complement individual specialist accreditation in Bangladesh. A Bangladeshi law firm that employed several accredited specialists in commercial law and that operated under a quality management system modeled on Lexcel would offer a level of quality assurance that individual accreditation alone cannot provide. The development of firm-level quality standards alongside individual specialist accreditation should therefore be an element of the comprehensive reform of the Bangladesh legal services market proposed in this commentary.

Section 64.4: Emerging Models in South Asia and the Global South

Beyond the established Western models, a number of emerging specialist accreditation frameworks in South Asia and the broader Global South offer relevant lessons for Bangladesh.

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These models have the particular advantage of having been designed for legal systems and professional cultures that share some of the features of the Bangladeshi context, including the colonial inheritance of common law institutions, the coexistence of formal and informal legal systems, the acute access to justice challenges of large populations with limited legal services, and the political economy of bar associations that are simultaneously regulatory bodies and professional interest groups.

Sri Lanka's Bar Association has developed specialist accreditation programs in commercial law and alternate dispute resolution that provide a useful regional reference point. The Sri Lanka Law College, which conducts the examination for admission to the legal profession in Sri Lanka, has introduced specialist examination papers in certain fields at the advanced level of its professional examination, creating a form of specialist recognition that is embedded within the entry-level qualification framework rather than being a post-admission certification. This approach, which makes specialist recognition available to graduates at the point of entry into the profession rather than only after years of practice, is innovative and worth considering as an element of the Bangladesh framework, particularly for practitioners who have completed specialist LLM programs at accredited law schools.

Pakistan's Bar Council has experimented with specialist training programs, though without a formal accreditation framework, and the Supreme Court of Pakistan has periodically considered proposals for specialist recognition in areas including constitutional litigation and commercial law. The Pakistan experience illustrates both the demand for specialist recognition and the political difficulties of implementing it in a bar culture organized around general practice and strongly resistant to formal differentiation within the profession.

The African experience with specialist accreditation, while geographically distant, is jurisprudentially relevant because several African bar associations are grappling with similar challenges. South Africa's Law Society has developed specialist accreditation programs that are explicitly oriented toward public interest fields including human rights law, environmental law, and constitutional litigation, with reduced fee requirements and modified experience requirements for practitioners working in legal aid organizations. The South African model's explicit commitment to ensuring that specialist accreditation serves access to justice rather than merely premium market segments is directly relevant to the Bangladesh framework's design.

India's National Law School movement, which has produced specialist LLM programs of increasing quality and rigor since the establishment of the National Law Schools in the 1990s, is developing a de facto specialist education framework even in the absence of formal specialist accreditation. The seven-year LLB-LLM combined program at the National Law Universities produces graduates who are in some respects already specialists at the point of entry into the profession. Bangladesh's Dhaka University Faculty of Law, the University of Chittagong's law faculty, and the other leading law schools could develop similar specialist LLM programs that feed into a specialist accreditation framework, creating a pipeline of specialists who enter the profession with both general legal competence and specialist education in particular fields.

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CHAPTER SIXTY-FIVE: THE SPECIALIST ACCREDITATION FRAMEWORK FOR BANGLADESH

Section 65.1: Foundational Principles of the Bangladesh Framework

The specialist accreditation framework proposed for Bangladesh rests on seven foundational principles that are derived from the philosophical and comparative analysis in the preceding chapters. These principles are not merely rhetorical commitments; each of them has specific design implications that will be elaborated in the sections that follow.

The first principle is genuine competence as the sole criterion. The Bangladesh specialist accreditation framework shall recognize and certify only practitioners who have demonstrated genuine expertise in a particular field of legal practice, assessed against rigorous and publicly transparent standards that are validated by evidence of their relationship to excellent legal service delivery. The framework shall not treat specialist accreditation as primarily a commercial product, a reputational signal, or a reward for seniority. Specialist accreditation is an honest representation to the public that a practitioner has been assessed and found to meet high standards of specialist expertise, and any framework that compromises this fundamental purpose defeats the point of its own existence.

The second principle is independence from sectional interest. The governance, standard-setting, and assessment functions of the Bangladesh specialist accreditation framework shall be insulated from the self-interested pressures of established professional groups, political influences, and commercial motivations that have systematically distorted the governance of the Bar Council and legal education in Bangladesh. This independence shall be structural, not merely rhetorical: it shall be embedded in the composition of governing bodies, the procedures for developing and reviewing standards, the accountability mechanisms for decisions, and the financial structure of the accreditation organization.

The third principle is accessibility and equity. The specialist accreditation framework shall be designed to serve the public interest in high-quality specialist legal services across Bangladesh, not merely in Dhaka and the major urban centers. This principle requires active attention to the geographic distribution of specialist practitioners, the gender composition of specialist practice, the field diversity of accreditation programs (including access to justice fields as well as commercial fields), and the financial accessibility of the accreditation process to practitioners who are not in high-income commercial practice.

The fourth principle is dynamic quality maintenance. Specialist accreditation is not a once-and-for-all achievement; it is an ongoing commitment to maintaining and developing expertise. The framework shall therefore include robust recertification requirements, including continuing education obligations specific to the specialty, ongoing practice requirements, and periodic reassessment of specialist competence, that ensure the specialist designation remains meaningful throughout a practitioner's career.

The fifth principle is integration with the reform of legal education and professional development. Specialist accreditation shall not be designed as a standalone system but as an

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integrated element of the comprehensive reform of legal education, professional training, and continuing professional development proposed throughout this commentary. The LLM specialist programs proposed in Part Three, the clinical legal education reforms proposed in Part Six, and the professional doctoral program proposed in Part Eight shall all feed into and connect with the specialist accreditation framework in ways that create coherent pathways for professional development.

The sixth principle is transparency and accountability. The standards for specialist accreditation, the assessment criteria, the examination materials (to the extent consistent with examination security), the outcomes of assessment, and the decisions of the accreditation body shall be publicly available and subject to independent review. Candidates who are denied accreditation shall have access to meaningful appeal processes. The performance of the accreditation system as a whole, including pass rates, the demographic composition of accredited specialists, the geographic distribution of specialists, and the feedback of clients who have used specialist services, shall be regularly reported and analyzed.

The seventh principle is international quality. The Bangladesh specialist accreditation framework shall be designed to produce specialists whose expertise is recognized and respected internationally, as well as domestically. This is not merely an aspiration toward prestige; it is a practical necessity for the development of Bangladesh as an international commercial and legal hub. Bangladeshi specialist accreditation standards shall be benchmarked against Australian, American, and international standards, with the goal of mutual recognition arrangements that allow Bangladeshi specialists to have their credentials recognized in other jurisdictions and allow internationally accredited specialists to have their credentials recognized in Bangladesh.

Section 65.2: The Institutional Architecture of the Bangladesh Specialist Accreditation Body

The design of the institution that will administer specialist accreditation is perhaps the most consequential design decision in the entire framework. The wrong institutional design will doom the framework regardless of the quality of its substantive standards; the right institutional design will enable the framework to develop, adapt, and improve over time as the legal system and the legal services market evolve.

The Bangladesh Specialist Accreditation Board (BSAB), as this commentary proposes to designate the new institution, shall be established as an independent statutory body under its own constitutive legislation rather than as a committee or division of the existing Bar Council. This structural independence from the Bar Council is non-negotiable and requires explanation, given that most existing specialist accreditation frameworks in other countries are administered by or closely connected to bar associations or law societies.

The reasons for independence from the Bar Council are rooted in the analysis of the Bar Council's governance failures developed in Part Five of this commentary and in the broader analysis of the political economy of professional regulation in Bangladesh. The Bar Council, as currently constituted, is a body whose governance is dominated by senior advocates with established practices and strong interests in maintaining the existing professional structure. It is a

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body that has demonstrated, over decades, a persistent tendency to prioritize the interests of established practitioners over the interests of legal reform, client welfare, and access to justice. Entrusting the governance of specialist accreditation to a body with this track record would be to invite the capture of accreditation standards by the same professional interests that the accreditation system is designed to challenge.

The constitutive legislation for the BSAB shall provide for a governing board of fifteen members, composed as follows. Five members shall be appointed by the Ministry of Law on the nomination of a selection committee composed of the Chief Justice, the Attorney General, the Law Commission Chair, and an independent panel of senior legal academics, selecting from a list of candidates nominated by legal professional associations, universities, and civil society organizations. Three members shall be drawn from the accredited specialist community, with at least one specialist from outside Dhaka, elected by accredited specialists in the relevant specialty areas on a rotating basis once the specialist community has been established. Two members shall be representatives of civil society, including at minimum one representative of an organization working on access to justice, appointed by a process that ensures genuine independence from both government and professional organizations. Two members shall be legal academics of established scholarly reputation in fields related to legal specialization, appointed by the universities. Two members shall be persons with relevant expertise in quality assurance, professional regulation, or related fields who are not lawyers, bringing an external perspective to the governance of the accreditation system. One member shall be a representative of the judiciary, designated by the Chief Justice. The fifteenth member, who shall serve as Chair, shall be a senior legal figure of recognized independence and integrity, appointed by the President on the recommendation of a panel including the Chief Justice and the Chair of the Law Commission.

This governance composition is designed to ensure that no single interest group, whether the organized bar, the government, legal academics, or civil society, can dominate the BSAB's decision-making. The requirement for at least one specialist member from outside Dhaka is designed to prevent the geographic concentration of specialist accreditation governance in the capital. The requirement for lay members is designed to ensure that the public interest perspective is institutionally represented in governance rather than relying on the goodwill of professional members to consider it. The judicial representative provides a link to the court system within which most specialist practice takes place.

The BSAB shall have a professional secretariat staffed by permanent civil servants of sufficient seniority and expertise to manage the administrative complexity of a specialist accreditation program. The secretariat shall include specialist staff responsible for examination development, portfolio assessment management, database management of accredited specialists, investigation of complaints against accredited specialists, and public communications. The funding of the BSAB shall be drawn from accreditation fees paid by applicants and accredited specialists, supplemented by government funding during the initial establishment phase and potentially by international development funding for the access to justice dimensions of the program.

The BSAB shall establish an Advisory Committee for each recognized specialty area, composed of accredited specialists in that area (including at least two specialists from outside Dhaka once

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sufficient out-of-Dhaka specialists exist) and two lay members, one of whom shall be a client or client representative with experience in using specialist legal services in the relevant field. The Advisory Committees shall be responsible for developing and maintaining the specialist competency standards for their respective fields, for developing examination content, for assessing portfolios, for conducting any oral assessment components, and for advising the BSAB on matters relating to their specialty area. The Advisory Committees shall report to the BSAB and their decisions shall be subject to BSAB review and approval.

Section 65.3: The Recognized Specialty Areas

The determination of which fields of legal practice will be recognized as specialty areas for accreditation purposes is among the most consequential decisions in the framework's design. The selection of specialty areas both reflects and shapes the professional culture of the bar: areas designated as specialties acquire a prestige that fields not designated as specialties do not enjoy, creating incentives for practitioners to concentrate their practices in designated areas.

The Bangladesh specialist accreditation framework should begin with an initial list of specialty areas that balances several considerations. It should include the fields of greatest commercial and market significance, where clients have the greatest ability to value specialist expertise and where specialist accreditation can generate the market incentives for practitioners to invest in the accreditation process. It should include the fields of greatest access to justice significance, where specialist expertise matters most for the clients who are most vulnerable to exploitation and least able to navigate the legal system without expert assistance. It should include the fields in which specialization is most clearly differentiated from general practice, where the argument that specialist expertise requires particular knowledge and skills is most compelling. And it should be manageable in size, so that the BSAB can maintain genuine quality standards across all recognized specialties without overextending its administrative capacity.

The initial list of recognized specialty areas proposed for Bangladesh comprises the following fields, each of which will be discussed in the section on content standards that follows.

Commercial and Corporate Law, covering the law of companies and corporations, commercial contracts, commercial dispute resolution, and the general regulatory framework for business activity, recognizes the field in which specialization is already most developed in Bangladesh's informal professional hierarchy and in which specialist accreditation can most immediately serve client interest in quality assurance.

Banking and Finance Law, covering banking regulation, secured lending, capital markets regulation, project finance, and the law of financial institutions, is a distinct specialty that overlaps with but is not identical to commercial law, and that requires particular expertise in the regulatory framework of the Bangladesh Bank, the Securities and Exchange Commission, and the relevant statutes including the Bank Company Act 1991 and the Financial Institutions Act 1993.

Tax Law, covering direct and indirect taxation, tax planning and compliance, tax litigation, and tax policy, is a field of both commercial and public importance in which specialist expertise is in

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high demand and short supply in Bangladesh. The complex interaction of the Income Tax Ordinance 1984, the VAT and Supplementary Duty Act 2012, and international tax treaties creates a body of technical law that requires genuine specialist mastery.

Environmental and Natural Resources Law, covering the regulatory framework for environmental protection, the law of natural resource extraction and management, the law of climate change and sustainability, and the interface between environmental law and constitutional rights, is a field of growing importance in Bangladesh, one of the countries most vulnerable to climate change, and one in which PIL jurisprudence has already produced a significant body of specialized case law.

Labour and Employment Law, covering individual employment rights, collective labor relations, occupational health and safety, and the law of industrial relations, is a field of critical importance in a country where the garment industry employs millions of workers and where labor rights violations are a persistent source of legal disputes with international dimensions.

Family Law and Personal Status Law, covering marriage, divorce, maintenance, custody, and inheritance under both the Muslim Family Laws Ordinance 1961 and the personal law of other communities, the Family Courts Ordinance 1985, and the developing constitutional jurisprudence on gender equality and personal autonomy, is a field in which specialist expertise is critical for the millions of Bangladeshis who navigate family disputes in circumstances of vulnerability and inequality.

Criminal Defense Law, covering the defense of accused persons in all stages of the criminal process from investigation through appeal, including both the substantive criminal law of the Penal Code and the procedural law of the Code of Criminal Procedure, is a specialty field in which the stakes of incompetence are particularly high and in which the public interest in quality assurance is therefore particularly compelling. The recognition of criminal defense as a specialty area challenges the common assumption that criminal courts are the domain of general practice, and it aligns Bangladesh with the English and American models in which criminal defense has been one of the first fields to receive formal specialist recognition.

Constitutional and Public Law, covering constitutional litigation, administrative law, judicial review, and public interest litigation before the Supreme Court, is a field in which the development of specialist expertise is critical for the effective use of Bangladesh's constitutional framework as an instrument of rights protection and government accountability.

Intellectual Property Law, covering patents, trademarks, copyright, design rights, and the interface between intellectual property and digital technology, is a field of growing economic importance as Bangladesh seeks to develop a technology sector and to protect its creative and cultural industries.

Land and Real Property Law, covering the complex framework of land law in Bangladesh including the registration system, the Land Survey Tribunals, the issues of Vested Property, the law of tenancy, and the increasing complexity of urban real estate transactions, is a field in which

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specialist expertise is needed not only in Dhaka but throughout Bangladesh where land disputes are among the most common and most consequential legal matters that ordinary citizens face.

International Trade and Arbitration Law, covering the law of international commercial contracts, the WTO framework, trade remedy law, export processing zones, and international commercial arbitration as both a dispute resolution process and a field of legal practice, is a specialty field of strategic importance for Bangladesh's ambitions in international commerce.

Immigration and Nationality Law, covering the law of citizenship, the rights of non-citizens in Bangladesh, the emigration of Bangladeshi workers to other countries, and the international legal framework for the protection of migrants and refugees, is a field in which specialist expertise is urgently needed given the millions of Bangladeshi workers abroad and the country's experience as both a source and a destination for migration.

Digital Law and Technology, covering cybersecurity law, data protection, electronic commerce, digital evidence, the regulation of social media and online platforms, artificial intelligence and its legal implications, and the intersection of technology with every area of traditional legal doctrine, is a newly recognized specialty field that reflects the profound transformation of law by digital technology. The development of Bangladesh's Digital Security Act, the ongoing debates about its replacement with a more rights-respecting framework, and the general digitization of both commerce and government in Bangladesh make digital law expertise a critical gap in the current legal services market.

Child Rights and Juvenile Justice Law, covering the rights of children under both international conventions including the Convention on the Rights of the Child and domestic law, the juvenile justice system, child protection, adoption and guardianship, and the interface between family law and child welfare, is a field in which specialist expertise serves some of the most vulnerable members of Bangladeshi society.

Human Rights and International Humanitarian Law, covering the domestic implementation of international human rights obligations, the rights of prisoners and detainees, the law of transitional justice, and the law governing armed conflict and its aftermath, is a specialty field of particular importance in a country still processing the legacy of the 1971 war and navigating the ongoing challenges of democratic transition.

Dispute Resolution and Mediation, covering the theory and practice of alternative dispute resolution including mediation, arbitration, and conciliation, the statutory framework of the Arbitration Act 2001 and its subsequent amendments, the institutional architecture of ADR centers in Bangladesh, and the international framework of commercial arbitration, is a specialty field that connects to the broader agenda of reducing court congestion and providing more accessible justice for Bangladeshi citizens.

Each of these seventeen initial specialty areas represents a genuine field of specialist practice in which the argument for formal accreditation is compelling, in which the design of assessment standards is feasible, and in which the public interest in quality assurance is clear. The list is not exhaustive; additional specialty areas should be considered for designation as the BSAB

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develops institutional capacity and as new fields of specialist practice emerge. The regulatory framework for financial technology, the law of space commerce, the law of genomics and bioethics, and other emerging fields will require specialist recognition as they develop in Bangladesh.

CHAPTER SIXTY-SIX: SPECIALIST COMPETENCY STANDARDS AND ASSESSMENT DESIGN

Section 66.1: The Framework of Specialist Competencies

The heart of any specialist accreditation system is its definition of specialist competencies: what does it mean to be a genuine specialist in a particular field? This question is both conceptual and empirical. Conceptually, it requires a theory of what expert legal practice involves. Empirically, it requires evidence about what expert practitioners in the relevant field actually know and do that distinguishes them from competent generalists practicing in the same field.

The competency framework for Bangladesh specialist accreditation draws on the general framework of legal competencies developed in Part Three of this commentary and extends it to define the additional dimensions of competence that specialist practice requires. Every recognized specialty shall have a published Specialist Competency Standard, developed by the relevant Advisory Committee and approved by the BSAB, that defines the knowledge, skills, and professional qualities expected of an accredited specialist in that field.

The Specialist Competency Standard for each field shall be organized around five domains of competence. The first domain is specialist substantive knowledge, meaning the body of legal rules, principles, doctrines, and analytical frameworks specific to the specialty field, including the relevant statutes, case law, secondary legislation, and regulatory guidance, as well as the extra-legal knowledge from other disciplines that specialist practice in the field requires. The specialist in environmental law must understand the relevant ecology and toxicology. The specialist in tax law must understand accounting and financial reporting. The specialist in family law must understand the principles of Islamic jurisprudence as they apply to personal status matters. The specialist in digital law must understand the technical architecture of the internet and the basic principles of computer science as they affect legal questions.

The second domain is specialist procedural and practice knowledge, meaning the procedural rules, court practices, regulatory processes, and professional conventions that govern the conduct of specialist work in the relevant field. The criminal defense specialist must know not only the law of criminal procedure but the actual practices of the police and prosecution that determine how criminal cases develop in practice. The commercial arbitration specialist must know not only the Arbitration Act but the rules and practices of the major arbitral institutions including the International Chamber of Commerce, the Singapore International Arbitration Centre, and the Bangladesh International Arbitration Centre. The land law specialist must know not only the statutory provisions governing land registration but the actual practices of the sub-registrar

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offices and the Land Survey Tribunals that determine how land transactions and disputes actually proceed.

The third domain is specialist analytical and problem-solving skills, meaning the ability to apply specialist knowledge to the analysis of novel and complex problems in the relevant field, to identify the legally relevant features of a factual situation, to construct coherent arguments from the relevant legal materials, and to advise clients on the likely outcomes of legal proceedings and the appropriate strategies for achieving their objectives. This domain is assessed primarily through the written examination and the oral assessment components of the accreditation process, which test whether the candidate can reason through novel problems in the specialist field rather than merely recite the rules.

The fourth domain is professional judgment and ethical conduct in specialist practice, meaning the exercise of the kind of practical wisdom that distinguishes excellent specialist practice from merely technically competent performance, including the ability to recognize the ethical dimensions of specialist work, to navigate conflicts of interest, to manage the complexity of specialist cases, and to communicate specialist knowledge clearly and honestly to clients who may lack the technical understanding to evaluate the specialist's advice. This domain is assessed primarily through the portfolio assessment and peer review components of the accreditation process, which evaluate how the candidate has actually performed in the contexts of real specialist work.

The fifth domain is ongoing specialist development, meaning the commitment to maintaining and developing specialist expertise through active engagement with the scholarly and professional literature of the specialty field, participation in specialist professional communities, and willingness to contribute to the development of specialist knowledge through scholarship, teaching, mentoring, and participation in the governance of the specialty. This domain is assessed not at the point of initial accreditation but through the continuing accreditation requirements that govern the specialist's ongoing designation.

Section 66.2: The Assessment Process in Detail

The assessment process for specialist accreditation in Bangladesh shall be multi-stage and multi-method, with each stage designed to test a different dimension of specialist competence that the other stages cannot adequately assess. The multi-stage process is more demanding than a single examination, but it is also more valid as an assessment of genuine specialist expertise. The investment of time and resources that the process requires is commensurate with the significance of the specialist designation, and any framework that is less demanding will not be credible as a genuine quality standard.

The first stage of assessment is the preliminary eligibility review. Before proceeding to substantive assessment, candidates must demonstrate that they meet the eligibility requirements for specialist accreditation in their chosen field. These requirements shall include being enrolled as an advocate with the Bangladesh Bar Council in good standing, having been in active practice as an advocate for a minimum of five years from the date of enrollment, having devoted a substantial portion of their practice to the relevant specialty field during the three years preceding

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the application, and having no record of disciplinary action by the Bar Council or any court that is inconsistent with the professional integrity required of an accredited specialist.

The experience requirement is one of the most consequential design decisions in the framework, because it determines how long after enrollment a practitioner can first seek specialist accreditation and therefore how early in a legal career the development of specialist expertise is formally recognized. The five-year minimum practice period, which mirrors the NSW program's requirement, reflects the view that genuine specialist expertise requires substantial experience in practice, not merely specialist education, before it can be meaningfully assessed. Some commentators argue for a shorter period, particularly for practitioners who have completed specialist LLM programs, on the grounds that formal specialist education significantly reduces the time needed to develop specialist competence. The framework should allow for a reduced experience requirement, of three years rather than five, for practitioners who hold a recognized specialist LLM degree in the relevant field from a law school meeting the accreditation standards developed in Part Three of this commentary.

The second stage of assessment is the written examination. The specialist written examination shall test knowledge across the full range of the Specialist Competency Standard for the relevant field, using a combination of multiple choice questions, short answer questions, and problem-based essay questions. The multiple choice questions shall test breadth of specialist knowledge across the entire competency standard. The short answer questions shall test the ability to state and explain the key rules and principles of the specialty field accurately and concisely. The problem-based essay questions, which are the most important component of the examination, shall test the ability to analyze a complex factual situation involving multiple legal issues specific to the specialty field, to identify the relevant legal principles and apply them to the facts, and to advise the client on the appropriate course of action. The examination shall be of sufficient duration, not less than four hours, to allow adequate testing across all domains of knowledge, and shall be conducted under examination conditions that prevent the use of unauthorized materials.

The question of open-book versus closed-book examination is one of genuine jurisprudential significance for the Bangladesh context. The Prothom Alo article of February 2025 on Bar Council enrollment reform, which criticized the focus of enrollment examinations on the memorization of statutory sections, raises the same concern about the specialist examination: should the specialist be required to recall specific statutory provisions from memory, or should the examination allow access to statutory texts and focus instead on the ability to analyze and apply them? The answer to this question depends on what we think specialist expertise actually involves. If the specialist's value lies in the breadth and depth of her or his knowledge, including the ability to recall provisions under pressure, then a closed-book examination testing memory is appropriate. If the specialist's value lies in analytical skill and professional judgment, and if the relevant statutes are in any event available in legal databases and mobile applications in practice, then an open-book examination that tests analytical rather than mnemonic capability is more valid.

The framework proposed here adopts a middle position. The examination shall be partially open-book: candidates shall have access to the relevant statutes and designated reference materials but

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not to case law digests, practice guides, or other secondary materials. This approach tests whether the candidate can navigate the statutory framework and apply it intelligently to complex problems, while not testing purely mnemonic capability in the age when statutory texts are universally available. The analytical skills tested by the examination are genuinely specialist skills that cannot be replaced by database search; the ability to recall specific statutory section numbers, by contrast, is a skill that has been rendered obsolete by legal technology and should not be tested.

The third stage of assessment is the portfolio submission. Candidates who pass the written examination shall proceed to the portfolio stage, in which they submit a portfolio of work product demonstrating the breadth and quality of their specialist practice. The portfolio requirement varies by specialty field, but in general shall require candidates to submit samples of their work including legal opinions, pleadings, transactional documents, or other instruments appropriate to the specialty field, covering a range of topics within the competency standard and representing the candidate's own work, produced over the three-year period preceding the application. The Advisory Committee for each specialty shall specify the portfolio requirements in detail, including the number and types of documents required, the word limits, and the criteria by which portfolios will be assessed.

The portfolio assessment is the dimension of the accreditation process that best captures the quality of the candidate's actual specialist practice. Unlike the written examination, which tests what the candidate knows in a controlled setting, the portfolio demonstrates what the candidate has actually done in practice, how she or he has analyzed real legal problems, advised real clients, and produced real legal instruments. The portfolio assessment is conducted by Advisory Committee members who are themselves accredited specialists in the relevant field and who therefore have the expertise to evaluate whether the candidate's work product meets the standard expected of a specialist.

The challenge of portfolio assessment is its susceptibility to the presentation of work product that does not actually represent the candidate's own analytical contribution. A candidate who submits documents drafted primarily by more senior lawyers in her or his firm, or who submits documents drafted from standard templates without genuine engagement with the specialist issues they raise, may pass a portfolio assessment without actually demonstrating the analytical capability that the assessment is designed to evaluate. The framework addresses this risk through a verification process: Advisory Committee assessors may request that candidates explain, in writing, the analytical decisions made in specific portfolio documents, justifying the approach taken and demonstrating awareness of alternative approaches. This verification process, while adding to the administrative demands of the assessment, significantly reduces the risk of portfolio fraud and increases the confidence that can be placed in the portfolio assessment's results.

The fourth stage of assessment is the peer review. Candidates who pass both the written examination and the portfolio stage shall be required to obtain peer review reports from a minimum of three advocates who are knowledgeable about the candidate's specialist work and who are able to provide independent, substantive assessments of the candidate's specialist competence. At least two of the three peer reviewers shall be practitioners with at least ten years

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of experience in the relevant specialty field. Peer reviewers shall not be close personal friends, family members, current partners or employers of the candidate, or members of the relevant Advisory Committee.

The peer review report form shall be structured to elicit substantive information about the candidate's specialist practice rather than general character references. Reviewers shall be asked to assess the candidate's knowledge of the specialty field, the quality of her or his legal analysis, the standard of her or his work product, the soundness of her or his professional judgment in complex specialist situations, the quality of her or his client communication, and the candidate's ethical conduct and integrity. Reviewers shall be informed that their reports are confidential but may be reviewed by Advisory Committee members in the assessment process, and that knowingly providing false or misleading information in a peer review report constitutes professional misconduct.

The fifth stage of assessment, which applies to certain specialty fields identified by the relevant Advisory Committee as presenting particular challenges for assessment through examination and portfolio alone, is the oral assessment. The oral assessment is not a traditional viva voce examination testing recollection of knowledge but a structured professional interview in which the candidate is presented with a complex specialist problem scenario and asked to analyze it in real time, explaining her or his reasoning and responding to questions from Advisory Committee members who may challenge her or his analysis, suggest alternative approaches, or raise additional facts that complicate the initial assessment. The oral assessment tests the kind of real-time analytical capability and professional judgment that distinguishes excellent specialist practice and that cannot be fully captured in the written formats of examination and portfolio assessment.

The specialty fields in which oral assessment shall be mandatory include Constitutional and Public Law, Criminal Defense Law, and Dispute Resolution and Mediation, where the quality of advocacy and oral analysis is particularly central to specialist competence. Other specialty fields may include oral assessment as an optional component or may use it selectively for candidates whose examination and portfolio results are borderline.

Section 66.3: The Standard-Setting Process and Psychometric Validity

The quality of the written examination is determined primarily by the quality of its questions, and the quality of its questions depends on the rigor of the standard-setting and question development process. The Bangladesh specialist accreditation framework shall invest significantly in the development and maintenance of high-quality examination questions, using the psychometric methods that have been developed for professional licensing examinations in law and other professions over the past several decades.

The Advisory Committee for each specialty field shall convene annually to review and update the Specialist Competency Standard, to review existing examination questions for continued relevance and validity, to develop new questions for addition to the examination question bank, and to analyze examination results from the previous cycle to identify questions that performed unexpectedly well or poorly. The question development process shall follow established item-

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writing principles, including the specification of the competency domain that each question is intended to assess, the identification of common misconceptions or errors that incorrect responses should reflect, and the review of questions by multiple committee members to identify ambiguity, cultural bias, or other defects before questions are included in the live examination.

The psychometric analysis of examination results shall track for each question the difficulty level (what proportion of candidates answered correctly), the discrimination index (whether candidates who did well overall tended to answer correctly and candidates who did poorly tended to answer incorrectly, as expected if the question is a valid measure of competence), and any evidence of differential item functioning (whether candidates from particular demographic groups answer the question correctly at rates significantly different from the overall pattern, which might indicate cultural bias in the question). Questions that fail these psychometric tests shall be removed from scoring or subjected to further review before being used in future examinations.

The standard-setting process, which determines what score is required to pass the written examination, shall use the modified Angoff method or a comparable criterion-referenced standard-setting approach rather than a norm-referenced approach. A criterion-referenced approach sets the passing score based on the performance of a candidate who just meets the defined standard of competence, regardless of what proportion of candidates achieve this standard. A norm-referenced approach sets the passing score based on the performance of the candidate group, for example by failing a fixed proportion of candidates. The criterion-referenced approach is the appropriate one for specialist accreditation because the purpose of the examination is to identify practitioners who meet the specialist standard, not to limit the number of specialists to a fixed proportion of applicants. If all candidates in a given cycle meet the specialist standard, all should pass; if few meet it, few should pass.

Section 66.4: Expedition and Access in the Assessment Process

The assessment process described above is necessarily complex and time-consuming, which creates risks of both practical inaccessibility and candidate attrition. The administrative infrastructure of the BSAB must therefore be designed to manage the process efficiently, to communicate clearly with candidates at every stage, and to minimize unnecessary delays and administrative burdens without compromising the rigor of the assessment.

The assessment calendar shall be published annually in advance, specifying the dates by which applications must be received, the dates of written examinations, the deadlines for portfolio submission, the dates by which peer review reports must be received, and the expected dates of assessment outcomes at each stage. Candidates shall receive clear and timely communication at each decision point, with specific and constructive feedback when they do not pass a particular stage of assessment.

The financial accessibility of the assessment process is a significant concern. If the fees for specialist accreditation are set at levels that only practitioners in high-income commercial practice can afford, the framework will serve the interests of the commercial bar while failing to develop specialist expertise in access to justice fields. The fee structure shall therefore be differentiated: candidates practicing primarily in legal aid organizations, NGOs, or publicly

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funded legal services shall be eligible for substantially reduced fees or fee waivers. The BSAB's funding model shall be designed to ensure that the cross-subsidy from higher-fee commercial practice candidates to lower-fee public interest candidates is economically sustainable.

The geographic accessibility of the assessment process, particularly the written examination, is similarly important. Requiring all candidates to travel to Dhaka for examination creates a significant burden for practitioners in Chittagong, Sylhet, Rajshahi, Khulna, and other cities and districts, and it reinforces the centralization of the legal profession in the capital that this commentary has consistently criticized. Written examinations shall therefore be administered simultaneously at multiple venues across Bangladesh, with at minimum one venue in each divisional headquarters city. The oral assessment, which requires Advisory Committee presence, may necessarily be concentrated in fewer venues initially, but the BSAB shall develop remote assessment capacity, using secure video technology, to allow candidates in distant locations to participate in oral assessments without requiring travel to Dhaka.

CHAPTER SIXTY-SEVEN: QUALIFICATION PATHWAYS FOR SPECIALIST ACCREDITATION

Section 67.1: The Standard Pathway

The standard pathway to specialist accreditation is the multi-stage assessment process described in the preceding chapter. A practitioner who has been enrolled as an advocate for at least five years, who has devoted a substantial portion of her or his practice to the relevant specialty field during the preceding three years, and who has no relevant disciplinary record, is eligible to apply for assessment. Upon passing all stages of the assessment, the practitioner is designated as an Accredited Specialist in the relevant field and is entitled to use the designation "Accredited Specialist" after her or his name when describing specialist expertise, subject to the ongoing obligations of the specialist designation.

The designation "Accredited Specialist" shall be protected by law: it shall be an offense under the Bangladesh specialist accreditation legislation for any advocate to represent herself or himself as an "Accredited Specialist" without holding a current specialist accreditation from the BSAB. This legal protection of the designation is essential for its value as an information signal to clients: if practitioners who have not been assessed and accredited can claim specialist expertise using similar language, the accreditation designation becomes meaningless. The legislation shall specify the permitted and prohibited representations, and the BSAB shall have the authority to investigate complaints about misrepresentation and to refer confirmed cases of misrepresentation to the Bar Council for disciplinary action.

Section 67.2: The Academic Achievement Pathway

The academic achievement pathway recognizes that practitioners who have completed specialist postgraduate legal education, particularly the specialist LLM programs proposed in Part Three of this commentary, have already demonstrated a significant component of the substantive

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knowledge required for specialist accreditation and should not be required to demonstrate the same knowledge again through the full written examination. The academic achievement pathway provides an exemption from part of the written examination for practitioners who hold recognized specialist LLM degrees in the relevant field.

The conditions for the academic achievement pathway are as follows. The practitioner must hold an LLM degree with a demonstrated specialization in the relevant specialty field, not a general LLM, from a law school that is accredited by the legal education accreditation body proposed in Part Three of this commentary and whose specialist programs are recognized by the BSAB. The practitioner must have obtained the LLM degree within the seven years preceding the specialist accreditation application, on the grounds that specialist knowledge developed more than seven years before the application may no longer reflect the current state of the field. The practitioner must still meet the reduced experience requirement of three years of active practice in the specialty field.

Where these conditions are met, the practitioner shall be exempt from the first paper of the written examination, which tests foundational specialist knowledge, while remaining required to sit the second and third papers, which test advanced knowledge and analytical capability respectively, and to complete the portfolio and peer review stages of assessment. The academic achievement pathway therefore significantly reduces the burden of assessment for practitioners with strong specialist educational foundations, while ensuring that academic knowledge is supplemented by demonstrated practical experience and the quality of actual work product.

The BSAB shall maintain a public register of law schools and LLM programs that are recognized for the purposes of the academic achievement pathway, updated annually based on the accreditation decisions of the legal education accreditation body and the BSAB's own assessment of program quality. The recognition of an LLM program for academic achievement pathway purposes shall be subject to periodic review, and recognition may be withdrawn if the program's quality declines below the relevant standard.

Section 67.3: The International Recognition Pathway

The international recognition pathway facilitates the recognition of specialist accreditation or equivalent certification granted by recognized professional bodies in other common law jurisdictions as meeting part or all of the requirements for specialist accreditation in Bangladesh. This pathway serves both the mobility interests of internationally qualified practitioners who wish to practice as specialists in Bangladesh and the broader goal of developing Bangladesh as an international legal hub by attracting internationally recognized specialist expertise.

The conditions for the international recognition pathway are as follows. The practitioner must hold specialist accreditation or equivalent certification from a recognized professional body in another jurisdiction, as designated by the BSAB. The specialty field of the overseas accreditation must be substantively equivalent to a recognized specialty field in the Bangladesh framework, which requires assessment of the competency standards and assessment processes of the overseas program against the Bangladesh standards. The practitioner must demonstrate adequate knowledge of Bangladeshi law in the relevant field, which may be assessed through a

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supplementary examination focused on Bangladeshi statutory and case law materials. The practitioner must meet the general eligibility requirements for enrollment as an advocate in Bangladesh.

The BSAB shall negotiate mutual recognition arrangements with the Law Society of NSW, the Queensland Law Society, and other Australian law societies whose specialist accreditation programs are recognized, with relevant American certification bodies whose standards the BSAB has assessed as meeting the required level of rigor, and with any other professional bodies whose specialist certification the BSAB determines to be sufficiently comparable in standards and assessment rigor. These mutual recognition arrangements shall be formalized in memoranda of understanding that specify the conditions and procedures for recognition and shall be reviewed periodically to ensure that the recognized overseas programs continue to meet the required standard.

Section 67.4: The Transitional Provisions Pathway

The introduction of any new specialist accreditation system must address the situation of experienced practitioners who have extensive specialist expertise developed over long careers without the benefit of any formal specialist recognition framework. Failing to provide a sensible transitional arrangement for these practitioners would either exclude genuinely excellent specialists from the accreditation system, because they cannot or will not submit to an assessment process designed for practitioners earlier in their careers, or force excellent practitioners through an assessment process that adds nothing to what is already demonstrably known about their expertise.

The transitional provisions pathway, sometimes called a grandfather clause in other jurisdictions, allows practitioners of established specialist expertise to obtain specialist accreditation through an expedited process that does not require them to sit the standard written examination. This pathway shall be available only during a defined transitional period following the establishment of the BSAB, proposed as five years from the date of the BSAB's establishment, and only to practitioners who meet strict eligibility criteria demonstrating genuinely exceptional specialist expertise.

The eligibility criteria for the transitional provisions pathway shall require that the practitioner has been in active practice as an advocate for at least fifteen years, that she or he has devoted the majority of her or his practice to the relevant specialty field during at least the preceding ten years, that she or he is recognized within the relevant specialist community as a practitioner of exceptional expertise, and that she or he has contributed to the development of specialist knowledge through scholarship, training, mentoring, or other forms of professional contribution. Candidates under the transitional pathway shall still be required to submit a portfolio demonstrating the quality of their specialist work and to obtain peer review reports from recognized specialist practitioners. The transitional provisions pathway assessment shall be conducted by a senior panel of Advisory Committee members, not the standard assessment panel.

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The transitional provisions pathway is not an easy path and should not be designed to be one. The temptation to design transitional provisions that are so broad as to effectively allow all senior practitioners to accredit themselves without meaningful assessment is a common failure mode in professional regulation reform, and it would undermine the fundamental purpose of the specialist accreditation framework by certifying practitioners whose expertise has not been genuinely tested. The transitional provisions pathway described here sets a high bar of demonstrated expertise, assessed by rigorous peer review and portfolio assessment, and restricts eligibility to practitioners who are genuinely exceptional rather than merely experienced.

CHAPTER SIXTY-EIGHT: THE RELATIONSHIP BETWEEN SPECIALIST ACCREDITATION AND CONTINUING PROFESSIONAL DEVELOPMENT

Section 68.1: The Architecture of Specialist CPD

The relationship between specialist accreditation and continuing professional development is not merely logistical but philosophically fundamental. The decision to accredit a specialist at a particular point in time is a certification of competence at that moment, not an assurance of competence forever after. Legal knowledge changes: statutes are amended, cases are decided, regulations are issued, international developments alter domestic law, and the practical context of legal practice in any field evolves in ways that require practitioners to continuously update their knowledge and skills. A specialist accreditation framework that does not maintain mechanisms for ensuring ongoing specialist competence is not a quality assurance system; it is a historical credential that tells clients only about a practitioner's competence at the time of accreditation, which may have been years or decades in the past.

The specialist CPD framework for Bangladesh shall be built around two complementary mechanisms: mandatory continuing education specifically tailored to the specialty field, and ongoing practice requirements that ensure the accredited specialist continues to work actively in the field in which she or he is accredited. The combination of these two mechanisms addresses both the knowledge dimension and the practical experience dimension of ongoing specialist competence.

The mandatory specialist continuing education requirement shall require each accredited specialist to complete a minimum of twenty hours per year of continuing education that is specifically related to her or his specialty field, drawn from programs recognized by the BSAB as meeting the required standard. This twenty-hour specialty CPD requirement is in addition to any general CPD requirements imposed by the Bar Council on all advocates. The recognized specialty CPD programs shall include seminars and workshops organized by the relevant Advisory Committee, academic conferences in the specialty field, specialist training programs offered by law schools with recognized specialist programs, and e-learning programs in the specialty field that meet the BSAB's quality standards. Advisory Committees shall publish annually a calendar of recognized specialist CPD events, ensuring that practitioners in all parts of Bangladesh have access to recognized programs without requiring travel to Dhaka for every CPD event.

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The ongoing practice requirement shall require each accredited specialist to continue to devote a substantial proportion of her or his practice to the relevant specialty field throughout the period of accreditation. An accredited specialist who has substantially withdrawn from specialist practice, either because she or he has moved to a different area of work or because other circumstances have reduced her or his specialist activity below the required threshold, shall not be entitled to represent herself or himself as a current specialist in that field. The practice requirement shall be assessed as part of the recertification process through a declaration by the practitioner, supported by evidence in the form of a brief practice report describing the specialist work conducted during the preceding accreditation period.

Section 68.2: Recertification and the Renewal of Specialist Status

Specialist accreditation in the Bangladesh framework shall be granted initially for a period of five years, at the end of which the specialist must apply for recertification to maintain her or his specialist designation. Recertification is not merely an administrative renewal; it is a substantive assessment of whether the accredited specialist has maintained and developed her or his expertise during the accreditation period.

The recertification process shall be less demanding than the initial accreditation process, reflecting the fact that the practitioner's expertise has already been assessed to a high standard and that the recertification is primarily concerned with ensuring ongoing competence rather than establishing initial competence. The recertification process shall consist of a declaration of continuing specialist practice, a record of specialist CPD completed during the accreditation period, a shortened portfolio demonstrating specialist work during the period (not the full portfolio required for initial accreditation), a single updated peer reference from a specialist practitioner attesting to the continued quality of the applicant's specialist work, and confirmation of no relevant disciplinary record during the accreditation period.

An accredited specialist who cannot satisfy the recertification requirements, either because she or he has not maintained the required level of specialist practice, has not completed the required specialist CPD, or has received relevant disciplinary findings, shall not be recertified and shall therefore lose the right to the specialist designation. This consequence is not trivial: the specialist accreditation designation carries market value, and its loss may significantly affect the practitioner's professional position. The framework therefore provides an appeal process for practitioners who believe that their recertification application has been refused unfairly, with the appeal heard by a panel of BSAB members not involved in the original decision.

A practitioner who has lost specialist accreditation due to failure to recertify may apply for reaccreditation through the standard accreditation pathway after a waiting period of two years. The reaccreditation process requires the full assessment process, not the expedited recertification process, reflecting the fact that the gap in accredited specialist practice creates genuine uncertainty about the practitioner's current specialist competence.

Section 68.3: The BSAB's Role in Specialist Knowledge Development

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The BSAB and its Advisory Committees have a role in the legal system that goes beyond the administration of accreditation assessments. They constitute, in each specialty field, a community of recognized specialist expertise whose collective knowledge and experience is a resource for the development of law and legal practice in that field. The BSAB should actively leverage this resource for the benefit of the legal system and the public interest.

In each specialty field, the Advisory Committee shall publish annually a State of the Specialty report that reviews the significant legal developments in the field during the preceding year, identifies the most important challenges and controversies in current specialist practice, and highlights the CPD priorities for specialists in the field. These reports shall be publicly available and shall serve both as professional development resources for accredited specialists and as information resources for the legal system more broadly, including for law reform commissions, parliamentary committees, and other institutions engaged in the development of law in the relevant field.

The Advisory Committees shall also establish research priorities and partnerships with law schools to advance the scholarly understanding of their specialty fields. Research in environmental law, family law, digital law, and other specialty fields is critically underdeveloped in Bangladesh, and the specialist practitioner community is a potentially important contributor to research through the practitioner knowledge that accumulates in the experience of specialist work and that is rarely systematically studied or communicated. Practitioner-scholar partnerships, in which accredited specialists collaborate with legal academics on research projects that draw on both practical expertise and academic methodology, would advance the quality of both research and practice in the specialty fields.

CHAPTER SIXTY-NINE: THE SPECIALIST ACCREDITATION FRAMEWORK AND ACCESS TO JUSTICE

Section 69.1: The Distributional Challenge of Specialization

The most persistent criticism of specialist accreditation frameworks across all jurisdictions is that they concentrate specialist expertise in metropolitan areas and in high-income practice fields, thereby deepening rather than reducing the access to justice divide between those who can afford specialist legal services and those who cannot. This criticism is based on evidence, not merely on ideological suspicion of credentialism. In Australia, research on the NSW Specialist Accreditation Program has consistently shown that accredited specialists are disproportionately concentrated in Sydney and in the commercial, family, and personal injury practice fields, with relatively few specialists in the access to justice fields and few specialists outside the major metropolitan centers. The American experience shows similar patterns.

The Bangladesh specialist accreditation framework must confront this challenge directly and must build distributional goals into its design rather than relying on market forces to distribute specialist expertise equitably. The market will not, on its own, distribute specialist expertise in ways that serve the majority of Bangladeshis who live outside Dhaka, who cannot afford

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premium legal fees, and whose legal needs are concentrated in fields like family law, land law, labour law, and criminal defense rather than commercial law and intellectual property. Only deliberate policy choices, embedded in the design of the accreditation framework and supported by complementary policies on legal aid, public legal services, and professional formation, will produce a distribution of specialist expertise that serves the national interest rather than simply the market.

The specific design choices that the Bangladesh framework adopts to address the distributional challenge are as follows. First, the fee structure for specialist accreditation shall include significant subsidies for practitioners working in legal aid and access to justice fields, funded by higher fees from practitioners in high-income commercial fields. Second, the CPD requirements for access to justice specialty fields, including family law, criminal defense, and child rights law, shall be partly funded by the BSAB from the cross-subsidy mechanism rather than entirely by the individual practitioner. Third, the BSAB shall set explicit targets for the geographic distribution of accredited specialists, with minimum targets for the number of accredited specialists in each divisional area outside Dhaka, and shall report annually on progress toward these targets. Fourth, the legal aid system shall be restructured to require that legal aid cases in designated complex fields be conducted by accredited specialists, creating market demand for specialist expertise in access to justice fields and thereby creating economic incentives for practitioners to seek specialist accreditation in these fields.

Section 69.2: The Legal Aid System and Specialist Accreditation

The development of a substantive relationship between the specialist accreditation framework and the legal aid system is essential both for the viability of the accreditation system in access to justice fields and for the improvement of the quality of publicly funded legal services. The reform of the legal aid system, described in Part Six of this commentary, should include requirements that legal aid in certain categories of cases be delivered by accredited specialists, mirroring the approach of the English Legal Aid Agency's panel systems.

The categories of legal aid cases in which specialist accreditation should be required shall include serious criminal cases where the penalty is imprisonment for more than five years, all children's law cases, family law cases involving allegations of domestic violence or child abuse, environmental law cases with significant public interest dimensions, and labour law cases in the garment and manufacturing sectors where the stakes for workers are high and the factual and legal complexity is significant. In these categories, the quality assurance that specialist accreditation provides is most critically needed, and the legal aid system's requirement of specialist practitioners creates the economic demand for specialist expertise in access to justice fields that the market alone would not generate.

The legal aid panels for specialist cases shall be administered by the Legal Aid Office, which shall maintain a register of accredited specialists who are available to take legal aid cases and who have agreed to the legal aid fee schedule. The legal aid fee schedule for specialist practitioners shall be set at levels that reflect the genuine costs of specialist practice, including the time investment in specialist CPD, rather than at the minimal rates that have historically characterized legal aid fees in Bangladesh. Adequate legal aid fees for specialist work are a

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necessary condition for attracting genuine specialist expertise into the legal aid market; inadequate fees will ensure that accredited specialists avoid legal aid work, defeating the purpose of the specialist accreditation requirement.

Section 69.3: Islamic Jurisprudential Dimensions of Specialist Access to Justice

The Islamic jurisprudential tradition provides a powerful foundation for the commitment to ensuring that specialist legal expertise serves not only those who can afford premium fees but all members of society who need it. The prophetic tradition of providing legal assistance to those who cannot afford it, the concept of amanah that requires professionals to use their expertise in service of those who trust it, and the concept of maslaha that requires institutional arrangements to serve the public welfare rather than private interests all support the distributional commitments of the specialist accreditation framework.

The concept of zakat, obligatory charitable giving, which is one of the five pillars of Islam, has been applied in some Muslim-majority societies to the legal profession through the development of norms of pro bono legal service. The establishment of a formal pro bono obligation for accredited specialists, requiring each accredited specialist to devote a minimum number of hours per year to free or subsidized legal services for persons who cannot afford legal fees, would operationalize the Islamic principle of professional obligation to the community in a way that is both institutionally meaningful and practically beneficial. This pro bono obligation could be coordinated with the CLEC network proposed in Part Six, enabling accredited specialists to discharge their pro bono obligations through structured placements in legal aid clinics where their specialist expertise can be most effectively deployed.

The concept of waqf, already discussed in the context of clinical legal education funding in Part Six, could be further developed in the context of specialist legal services through the establishment of specialist legal services waqfs in each divisional area. A waqf fund, established with contributions from commercial law firms, successful commercial practitioners, and philanthropic organizations, could finance the provision of specialist legal services to those who cannot afford them, through a combination of direct employment of specialist practitioners and subsidized referral fees for accredited specialists who take reduced-fee cases from the waqf referral list. The waqf model has the advantage of being both institutionally sustainable, since waqf endowments are permanent, and culturally resonant in a country where Islamic charitable institutions command widespread public trust.

CHAPTER SEVENTY: THE GOVERNANCE OF SPECIALIST ETHICS AND DISCIPLINE

Section 70.1: The Ethics of Specialist Representation

The accredited specialist occupies a distinctive ethical position within the legal profession. The specialist designation carries a representation to the public, which is relied upon by clients in choosing legal representation, that the holder of the designation has demonstrated expertise in the

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relevant field that meets a defined standard. This representation creates both heightened ethical obligations and heightened accountability.

The foundational ethical obligation of the accredited specialist is accuracy in the representation of her or his specialist expertise. The specialist who is accredited in commercial law must not represent herself or himself as a specialist in tax law; the specialist in family law must not represent herself or himself as a specialist in criminal defense. This may seem obvious, but the temptation to expand the reach of a specialist designation beyond its actual scope is real in a competitive market where clients seek specialist expertise across multiple fields. The BSAB's legislation shall specify the precise form of the specialist designation, the fields in which it applies, and the representations that the specialist may and may not make, and the Bar Council's disciplinary framework shall treat misrepresentation of specialist credentials as a serious professional misconduct matter.

The specialist also has heightened obligations in relation to the maintenance of specialist knowledge. The general practitioner who gives advice in an area of law with which she or he is not fully current may be in breach of her or his general duty of competence, but the accredited specialist who does so has also violated the representation of specialist expertise that her or his accreditation conveys. The specialist must therefore be more diligent than the generalist in maintaining current knowledge of developments in the specialty field, and must be more forthcoming in informing clients when a development in the law has occurred that she or he has not yet fully assimilated.

The conflict of interest rules that apply to all lawyers apply with particular force to specialists, because the specialist's expertise may be sought by multiple parties with conflicting interests in a particular dispute, and the specialist's knowledge of confidential information obtained from one client creates particular risks of prejudice to another client in the same field. The development of specialist-specific guidance on conflicts of interest management, formulating rules that are calibrated to the specific patterns of specialist practice in each field, is an important element of the ethical framework for specialist practice.

Section 70.2: The Disciplinary Framework for Accredited Specialists

The discipline of accredited specialists requires a framework that operates in coordination with, but is distinct from, the Bar Council's general disciplinary framework. The Bar Council has authority over all enrolled advocates, including accredited specialists, in relation to general professional misconduct. But specialist misconduct, meaning conduct that specifically violates the standards of specialist practice or that involves the misrepresentation of specialist credentials, requires a specialist-specific disciplinary process.

The BSAB shall have the authority to investigate complaints about accredited specialists that relate to the misrepresentation of specialist credentials, the failure to maintain specialist CPD requirements, or conduct specific to specialist practice that falls below the specialist standard. The BSAB's disciplinary authority shall be concurrent with, not exclusive of, the Bar Council's general disciplinary authority; in cases involving both general professional misconduct and specialist-specific misconduct, the two bodies shall coordinate to avoid duplicative proceedings.

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The BSAB's disciplinary sanctions shall include a formal warning, temporary suspension of the specialist designation, permanent revocation of the specialist designation, and referral to the Bar Council for consideration of additional sanctions under the general disciplinary framework. The sanction of permanent revocation is the most severe specialist-specific sanction and shall be reserved for cases of serious specialist misconduct, including deliberate misrepresentation of specialist credentials, systematic failure to maintain specialist expertise while continuing to represent clients in the specialist field, and conduct that fundamentally undermines the integrity of the specialist accreditation framework.

The disciplinary process shall include procedural protections that ensure fairness to respondents while enabling the BSAB to act decisively against genuine specialist misconduct. Respondents shall receive adequate notice of complaints, shall have the right to respond in writing and, in serious cases, to appear before a disciplinary panel, and shall have the right to appeal adverse decisions. The disciplinary panels shall include at least one lay member, ensuring that the public interest perspective is represented in disciplinary decision-making.

CHAPTER SEVENTY-ONE: THE REFORM OF THE BAR COUNCIL IN LIGHT OF THE SPECIALIST FRAMEWORK

Section 71.1: The Complementarity of Bar Council Reform and Specialist Accreditation

The introduction of a specialist accreditation framework does not reduce the importance of reforming the Bar Council itself; rather, the two reform agendas are complementary and mutually reinforcing. The Bar Council reform agenda, which has been discussed in depth in Part Five of this commentary, addresses the structure, governance, and functions of the primary regulatory body for the legal profession. The specialist accreditation framework proposed in this Part operates alongside the reformed Bar Council as a supplementary quality assurance mechanism that the Bar Council, in its current form, lacks the capacity and the independence to provide.

The relationship between the reformed Bar Council and the BSAB shall be cooperative but clearly differentiated. The Bar Council shall retain its primary functions of enrolling advocates, setting and enforcing general professional standards, and administering general discipline. The BSAB shall have exclusive responsibility for specialist accreditation, specialist CPD requirements, and specialist-specific discipline. The two bodies shall share information relevant to each other's functions, coordinate on investigations involving both general and specialist misconduct, and jointly develop professional guidance on issues at the intersection of general and specialist practice.

The reforms to the Bar Council proposed in Part Five, including the reform of its governance to ensure genuine independence from factional control, the reform of its enrollment examination to test analytical capability rather than memorization, the reform of its CPD framework to ensure meaningful rather than nominal continuing education, and the reform of its disciplinary framework to ensure effective enforcement of professional standards, are all conditions for the

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specialist accreditation framework to work effectively. A specialist accreditation system that operates alongside a dysfunctional Bar Council will be compromised by the general dysfunction of professional regulation that the Bar Council's failures produce. The reform of the Bar Council and the development of specialist accreditation must therefore proceed in coordination, not as alternative strategies for improving the legal profession.

Section 71.2: The Bar Council's Role in Supporting Specialist Development

The reformed Bar Council should actively support the development of the specialist accreditation framework rather than treating it as a competitive threat to its own authority. This support should take several forms. The Bar Council's enrollment examination should explicitly prepare candidates for the possibility of specialist practice, including in its curriculum content relating to the role of specialist expertise in the legal profession, the existence of specialist accreditation pathways, and the professional obligations of accredited specialists. The Bar Council's CPD framework should integrate with the BSAB's specialist CPD requirements, providing a coherent structure of professional development that moves from general competence through specialist expertise in a logical progression.

The Bar Council should also take an active role in promoting the development of specialist expertise among junior lawyers, including through mentorship programs that match junior lawyers with accredited specialists in fields of their interest, through scholarship programs that support junior lawyers in completing specialist LLM programs, and through advocacy for the development of specialist practice groups within bar associations at all levels. The professional culture of the Bangladesh Bar, which this commentary has described as resistant to formalized excellence and to the differentiation that specialization entails, can only be changed gradually and through sustained institutional effort. The Bar Council's leadership role in advocating for the value of specialization, and in supporting junior lawyers who aspire to specialist practice, is an essential element of that sustained effort.

Section 71.3: Technology, Digital Law, and the Future of Specialist Practice

The emergence of artificial intelligence, legal technology, and digital legal services as significant forces in the legal services market creates both new challenges and new opportunities for the specialist accreditation framework. The challenge is that AI and legal technology are rapidly commoditizing some of the routine dimensions of legal work that have historically provided the experiential foundation for specialist development: document review, legal research, template drafting, and case outcome prediction are all areas where AI tools are advancing rapidly and where the practitioner's unique added value lies increasingly in the higher-order analytical and judgment functions that AI cannot replicate.

The opportunity is that AI and legal technology create new demands for specialist expertise in digital law, technology regulation, data protection, and the application of AI itself to legal processes. The designation of Digital Law and Technology as a recognized specialty area in the Bangladesh framework reflects this opportunity. As Bangladesh develops its digital economy and as its legal system adapts to the pervasive influence of digital technology on every area of

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law, the demand for practitioners with genuine specialist expertise in these fields will grow substantially.

The framework for specialist accreditation in Digital Law and Technology requires particular care in its design because the field is exceptionally dynamic: the law of artificial intelligence, for example, is developing faster than any specialist curriculum can be updated through normal administrative processes. The Advisory Committee for Digital Law and Technology shall therefore be designed with a shorter curriculum review cycle than other specialty fields, updating its Specialist Competency Standard annually rather than every three years, and the CPD requirements for digital law specialists shall be proportionally higher to reflect the rate of change in the field.

The use of digital technology in the administration of the specialist accreditation system itself is also an important design consideration. Online examination delivery, digital portfolio submission, video-based oral assessment, and digital management of the accredited specialist register are all dimensions of a modern accreditation system's administrative infrastructure. The BSAB should invest from the outset in the digital infrastructure needed to manage these functions efficiently and securely, and should partner with Bangladesh's government digital services infrastructure and with reliable private technology providers to develop a system that is robust, accessible, and user-friendly for practitioners throughout the country.

CHAPTER SEVENTY-TWO: THE PROFESSIONAL DOCTORAL PROGRAM AND ITS RELATIONSHIP TO SPECIALIST ACCREDITATION

Section 72.1: The Doctoral Dimension of Specialist Excellence

The specialist accreditation framework, as described in the preceding chapters, is designed to recognize and certify the expertise of practitioners who have developed genuine mastery of a particular field through a combination of education and sustained practical experience. But there is a further dimension of specialist excellence that the accreditation framework, by itself, does not fully capture: the integration of specialist practice knowledge with systematic scholarly investigation, the production of original knowledge about the law, and the contribution to the intellectual development of the specialty field that distinguishes the truly exceptional specialist from the merely excellent practitioner.

This dimension of specialist excellence is the proper domain of the professional doctoral program, which Part Eight of this commentary will address in full detail. For present purposes, it is important to note the relationship between the specialist accreditation framework and the professional doctorate as complementary elements of a comprehensive strategy for developing specialist legal excellence in Bangladesh. The accredited specialist who has completed a professional doctorate in her or his specialty field represents a level of expertise that combines the practical mastery certified by accreditation with the scholarly depth and research capability developed through doctoral study. This combination, which is the model of the scholar-

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practitioner, represents the highest aspiration of the specialist accreditation framework and a model of professional development that Bangladesh should actively support and reward.

The professional doctorate for law, whether designated as a Juris Doctor in the American tradition, a Doctor of Laws in the English tradition, or an SJD (Scientiae Juridicae Doctor) in the tradition that this commentary recommends for Bangladesh, is distinct from the PhD in its orientation toward the needs of professional practice rather than toward pure scholarship. The professional doctorate requires the same rigor of scholarly investigation that the PhD demands, but it focuses that investigation on problems that are rooted in professional practice rather than in purely theoretical questions, and it evaluates the candidate's work in part against the standard of professional significance as well as against the standard of scholarly contribution.

The relationship between the professional doctorate and specialist accreditation should be formalized in the following ways. Practitioners who hold a professional doctorate in a specialty field, earned from a law school that meets the accreditation standards proposed in Part Three, shall be entitled to an expedited pathway to specialist accreditation in that field. The doctoral candidate's extensive engagement with the scholarly literature and the practical dimensions of the specialty field during doctoral study, verified by the substantive examination and dissertation requirements of the doctorate, shall be recognized as equivalent to the academic knowledge component of specialist accreditation. The doctoral graduate will still be required to demonstrate practical experience through the portfolio and peer review components of the accreditation process, but shall be exempt from the written examination.

CHAPTER SEVENTY-THREE: CONTROVERSIES, CRITIQUES, AND RESPONSES

Section 73.1: The Generalist Tradition Critique

The most fundamental critique of the specialist accreditation framework proposed in this Part comes from advocates of the generalist tradition who argue that formalized specialization threatens the essential unity of the legal profession and the essential versatility of the lawyer who can advise clients on the full range of their legal needs. This critique deserves serious engagement rather than dismissal, because it reflects genuine values about the nature of legal expertise and the social role of the lawyer.

The strongest version of this critique draws on the tradition of the advocate who brings to every case not a narrow specialist knowledge but the fundamental skills of legal analysis, advocacy, and professional judgment that are transferable across all fields of law. The great advocates in every common law tradition have not been known for narrow specialization but for the breadth of their legal understanding and the power of their advocacy across a wide range of matters. In Bangladesh, the tradition of the senior advocate who commands the court on any matter placed before her or him is a genuine professional ideal that the specialist accreditation framework should not carelessly undermine.

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The response to this critique acknowledges its force but argues that it does not apply to the specific design of the framework proposed. The Bangladesh specialist accreditation framework does not prohibit any advocate from practicing in any field; it does not create a closed system in which only accredited specialists can practice in their specialty fields (except in the specific context of legal aid cases in designated complex categories). It does not prevent an excellent generalist advocate from bringing the general skills of advocacy and legal analysis to any matter in any field. What it does is provide a mechanism for recognizing and certifying the additional expertise that genuine specialists in particular fields have developed, and for enabling clients to identify this expertise when they need it.

The framework therefore operates alongside, not instead of, the generalist tradition. The senior advocate who commands any court on any matter is still a valued member of the profession and is not disadvantaged by the specialist accreditation framework. What the framework adds is a way for clients to identify practitioners who have gone further than general competence and have developed genuine mastery of a particular field. This is not a threat to the generalist tradition; it is a recognition that the generalist tradition, however valuable, is not sufficient by itself to ensure the quality of legal services in the complex and specialized fields of contemporary law.

Section 73.2: The Credentialism Critique

A different critique comes from scholars and practitioners who are concerned not about the threat to the generalist tradition but about the tendency of formal credentialism to create hierarchies that serve the interests of established practitioners rather than the public interest in legal service quality. On this view, specialist accreditation frameworks, whatever their stated purposes, tend in practice to create barriers to entry that protect the market position of already-successful practitioners and to create artificial scarcity of specialist expertise that drives up fees in ways that benefit specialist practitioners rather than clients.

The evidence for this critique from the American experience is not without substance. American specialist certification programs have in some cases been criticized for having too high a pass rate (suggesting that the standard is not genuinely rigorous), for concentrating certified specialists in high-income practice fields rather than distributing them equitably, and for the high fees of the certification process that may deter less affluent practitioners regardless of their expertise. In a country like Bangladesh, where the concerns about professional capture of regulatory processes are particularly acute, the risk that specialist accreditation becomes primarily an exclusionary mechanism warrants serious attention.

The response to this critique is that the risks it identifies are genuine but addressable through deliberate design choices that the Bangladesh framework incorporates. The independence of the BSAB from the organized bar is designed precisely to prevent capture of the accreditation process by established practitioners who might use it primarily to protect their market position. The genuinely rigorous assessment process, with failure rates that reflect the actual distribution of specialist competence in the profession, is designed to ensure that accreditation certifies real expertise rather than serving as an artificial barrier. The differentiated fee structure is designed to prevent financial barriers from preventing less affluent practitioners with genuine expertise from accessing accreditation. And the distributional goals embedded in the framework's design,

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including the geographic distribution targets and the legal aid integration, are designed to ensure that specialist expertise is distributed in ways that serve the public interest rather than merely the commercial market.

Section 73.3: The Political Controversy Around the Enrollment Exam and Specialist Accreditation

The ongoing controversy about the Bangladesh Bar Council's enrollment examination, which has received significant press attention in 2024 and 2025, is directly relevant to the design of the specialist accreditation framework because the same arguments that are made about the enrollment examination apply, in modified form, to the specialist examination.

The Prothom Alo article of February 2025, titled "Reforming Bangladesh Bar Council Enrolment: Call for Practical Legal Education," criticized the enrollment examination's focus on memorizing sections of the Penal Code, Civil Procedure Code, and Criminal Procedure Code as "not only outdated but also irrelevant to the skills needed in modern legal practice." The article argued, correctly in this commentary's view, that the ability to look up statutes has been rendered trivial by legal databases and mobile apps, and that what matters is the ability to interpret and apply the law effectively. The Daily Star article of November 2024 described Bar Council reform as "no longer optional but a crucial necessity," noting concerns about corruption in the certification process and inefficiencies in examination processes.

These critiques apply with even greater force to the specialist accreditation framework, which must assess not general legal competence but genuine specialist expertise of a high order. The specialist examination proposed in this Part is explicitly designed to avoid the memorization-focused approach criticized in the enrollment exam, using open-book access to statutory texts and focusing entirely on analytical capability, problem-solving, and the application of specialist knowledge to complex situations. This design choice is both educationally sound and politically necessary: an accreditation framework that reproduces the failures of the enrollment examination in the context of specialist certification will face the same legitimate criticisms and will enjoy no more legitimacy than the current system.

The political controversy around the enrollment examination also illustrates the importance of process in reform design. The Daily Star's reference to "lack of transparency and fear of retaliation" in the Bar Council context underscores that reform proposals must be advanced through processes that are visibly transparent, that genuinely involve those whose interests are affected, and that are designed to produce outcomes that serve the public interest rather than the interests of those who control the reform process. The BSAB's governance design, with its composition of independent members and its transparent decision-making processes, is designed to provide the kind of legitimate institutional foundation that the current Bar Council lacks.

Section 73.4: The Question of Compulsory Versus Voluntary Accreditation

The question of whether specialist accreditation should be voluntary or compulsory, that is, whether advocates should be required to obtain specialist accreditation to practice in particular

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fields or whether accreditation should be a voluntary mark of excellence that any practitioner may seek, is one of the most controversial design questions in the framework.

The voluntary model has significant advantages. It does not restrict the ability of any advocate to take any case in any field, preserving the flexibility that the generalist tradition values. It allows the market to determine whether specialist accreditation generates sufficient premium to justify the investment in the accreditation process. It reduces the political resistance of the established bar to the introduction of the framework, since voluntary accreditation does not threaten any existing practitioner's right to practice. And it allows the accreditation framework to develop gradually, establishing its credibility through the quality of its assessment before being extended to fields where compulsory accreditation might be considered.

The compulsory model has advantages in terms of the public interest in quality assurance. If specialist accreditation is voluntary, clients who seek specialist services may still engage non-accredited practitioners who represent themselves as specialists using language that does not technically use the protected "Accredited Specialist" designation. The market incentive for non-accredited practitioners to informally represent specialist expertise creates a risk of client confusion that voluntary accreditation cannot fully address. In fields where the stakes are highest, such as serious criminal defense and complex family law cases involving children, the public interest in ensuring that practitioners meet a defined standard of specialist competence may justify compulsory accreditation requirements.

The framework proposed in this Part adopts a hybrid approach. For most specialty fields, accreditation is voluntary: any advocate may practice in any field, and the accreditation designation is a voluntary mark of excellence that practitioners may seek and clients may look for. In the specific context of legal aid cases in designated complex categories, as described in Section 69.2, accreditation is compulsory: legal aid cases in these categories may only be conducted by accredited specialists. This limited compulsion serves the public interest in quality assurance in the fields where state-funded legal representation is most critical, while preserving the flexibility of the general profession in the much larger voluntary sector.

CONCLUDING SYNTHESIS OF PART SEVEN: THE SPECIALIST ACCREDITATION FRAMEWORK AS INSTITUTIONAL ARCHITECTURE FOR LEGAL EXCELLENCE

The argument of Part Seven has moved from the philosophical foundations of legal specialization through the historical development of specialist recognition in Bangladesh and other common law systems, to develop a comprehensive institutional proposal for the Bangladesh Specialist Accreditation Board and the framework of specialist standards, assessment processes, qualifying pathways, CPD requirements, disciplinary mechanisms, and governance structures that would make it function.

The framework proposed is ambitious but realistic. It is ambitious in its insistence on genuine competence assessment rather than merely formal credentialism, in its commitment to distributional goals that serve access to justice rather than only market demand, and in its

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aspiration to produce internationally recognized specialist excellence in Bangladesh's legal profession. It is realistic in its attention to the political economy of professional regulation in Bangladesh, its recognition of the constraints of administrative capacity and financial resources, and its phased implementation design that allows the framework to develop institutional credibility before its most demanding elements are introduced.

The fundamental conviction that animates the entire framework is that the quality of legal services matters, not merely as a market preference but as a requirement of justice. The client who needs a specialist in environmental law to protect her or his community from industrial pollution, the worker who needs a specialist in labour law to vindicate her or his rights against an exploitative employer, the woman who needs a specialist in family law to navigate a divorce and custody dispute with appropriate understanding of both Islamic personal law and constitutional principles, and the accused person who needs a specialist in criminal defense to receive adequate representation: all of these clients deserve legal services that meet a genuine standard of specialist excellence, and all of them currently lack any reliable mechanism for identifying whether the advocate they are engaging actually meets that standard.

The Bangladesh Specialist Accreditation Board, as proposed in this Part, is designed to provide that mechanism. It will not solve all the problems of the Bangladeshi legal services market, and it should not be expected to. But it will provide, for the first time, a credible, independent, rigorous, and publicly accountable framework for recognizing and certifying specialist expertise in the legal profession, and it will create institutional incentives for the continuous development of specialist knowledge and the equitable distribution of specialist services across the country.

The jurisprudential vision that underlies this proposal is, at its core, Dworkinian. Ronald Dworkin's insistence that law is a matter of principle, that legal decisions must be justifiable in terms of principles that apply consistently across cases, and that the legal system exists ultimately to serve justice rather than merely to produce enforceable outcomes, has direct implications for how the legal profession should be organized and regulated. A legal profession organized around the genuine cultivation and recognition of expertise, governed by institutions that are accountable to the public interest, and committed to the distribution of legal services in ways that serve justice rather than merely market demand, is a legal profession that takes Dworkin's vision seriously. The specialist accreditation framework proposed in this Part is one contribution to building that profession in Bangladesh.

The Islamic jurisprudential tradition's concept of ihsan, of excellence and benevolence in professional conduct, offers a complementary vision that is particularly resonant in Bangladesh's social and cultural context. The accredited specialist who has genuinely mastered a particular field of law, who continues to develop and maintain that mastery through sustained professional engagement, who uses her or his expertise in service of both individual clients and the broader public interest, and who accepts the accountability that the specialist designation entails, embodies the concept of ihsan in professional life. The specialist accreditation framework is, among other things, an institutional expression of the commitment to professional excellence that ihsan demands.

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The work of Part Seven is, necessarily, incomplete. The institutional proposal offered here will require detailed legislative drafting, sustained political advocacy, significant financial investment, and years of patient institutional development before it becomes operational reality. The process of developing the Specialist Competency Standards for each of the seventeen initial specialty areas will require extensive engagement with specialist practitioners, legal academics, clients, and international experts. The assessment instruments for each specialty will require careful development, psychometric validation, and piloting before they can be used for high-stakes accreditation decisions. The BSAB's administrative infrastructure will require skilled staffing, adequate funding, and effective digital systems before it can manage the operational demands of a comprehensive specialist accreditation program.

But the case for the framework is compelling, the comparative evidence supports its feasibility, and the moment for its introduction, in the broader context of the legal reform agenda that this commentary has been developing throughout its Parts, is now. Bangladesh deserves a legal profession organized around genuine excellence rather than formal compliance, around the honest representation of expertise rather than the convenient claim of all competences, and around the service of justice rather than the maintenance of professional privilege. The specialist accreditation framework is one of the most important institutional steps toward that vision.

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On legal aid and specialist legal services, the UNDP Bangladesh reports, particularly "Enabling Access to Justice for All in Bangladesh" (May 2024) and "UNDP Joins Hands with Bangladesh for Justice Reform" (July 2025), are the most current sources. The 2025 article by Tahura and Alam in the International Journal of the Legal Profession, "Looking Ahead to Legal Aid Services in Bangladesh: Is Access to Justice an Unattainable Ideal?", Volume 32, Issue 2, provides the most recent scholarly analysis of the formal legal aid system. The Commission on Legal Empowerment of the Poor, Making the Law Work for Everyone (UNDP, 2008), provides the broader international framework for the legal empowerment approach that informs Section 69.2.

On the economics of legal specialization and the distributional implications of specialist certification, the Australian research literature is most relevant, including work published through the Law and Economics Association of Australia and New Zealand and the University of New South Wales Faculty of Law. The American Bar Foundation's research on the legal services market, particularly the work of John Heinz and Edward Laumann documented in Chicago Lawyers: The Social Structure of the Bar (2nd edition, 1994), provides the foundational empirical analysis of how specialization interacts with the market for legal services, and while its context is American, its analytical framework applies broadly.

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END OF PART SEVEN

Part Eight will develop the professional doctoral program for Bangladesh's legal profession, covering the design, curriculum, supervision, assessment, and governance of the SJD or LLD degree; the relationship between the professional doctorate and legal scholarship; the international comparative models of professional doctoral education in law; the institutional home of the professional doctorate in the Bangladesh law school system; the funding and support structures for doctoral candidates; the role of the professional doctorate in developing legal scholarship of international quality in Bangladesh; the relationship between the professional doctorate and specialist accreditation as developed in Part Seven; and the broader question of how doctoral legal education contributes to the intellectual leadership of the legal profession and to the development of Bangladesh as a center of legal scholarship in South Asia and beyond.

Part Nine will address the reform of personal law in Bangladesh, covering the Muslim Family Laws Ordinance 1961 and its proposed reforms; the law of divorce, maintenance, and custody; the inheritance provisions of Islamic law and their codification; Hindu personal law and the arguments for statutory reform; the rights of religious minorities in the personal law system; the interface between personal law and the constitutional guarantee of equality; and the comparative experience of Muslim-majority countries that have reformed personal law within an Islamic jurisprudential framework.

Part Ten will address transitional justice in Bangladesh, covering the legacy of the 1971 Liberation War; the International Crimes Tribunal and its jurisprudence; the comparative experience of transitional justice mechanisms globally; the philosophy of retributive and restorative justice in the transitional context; and the ongoing challenges of accountability, truth, and reconciliation in Bangladesh's post-independence history.

Parts Eleven and Twelve will address the court system and procedural reform and the future of Bangladeshi law in the global legal order respectively.

PART EIGHT: THE PROFESSIONAL DOCTORAL PROGRAM AND THE DEVELOPMENT OF LEGAL SCHOLARSHIP IN BANGLADESH

PREFACE TO PART EIGHT

There is a peculiar paradox at the heart of legal education in Bangladesh that this Part sets out to address with the seriousness it deserves. Bangladesh is a country with a complex, rich, and deeply consequential legal order. It has a constitution that is one of the most ambitious documents of its generation, shaped by the philosophy of the liberation movement and the aspirations of a people who had sacrificed enormously for the right to govern themselves under laws of their own making. It has a legal history that stretches back through colonial codification

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to Mughal jurisprudence and the ancient traditions of the Bengal delta. It has a Supreme Court whose PIL jurisdiction has produced judgments of genuine constitutional significance, a legislative history that intersects with some of the most contested questions in South Asian political life, and a bar and bench that have produced individuals of remarkable intellectual distinction. And yet, Bangladesh lacks a tradition of systematic, sustained, institutionally supported legal scholarship that reflects and builds upon the depth of this heritage.

The paradox is this: the legal system of Bangladesh is sufficiently complex, sufficiently historically rich, and sufficiently implicated in questions of genuine philosophical significance to sustain a major tradition of legal scholarship. But the institutions that should support that tradition, the law schools, the professional bodies, the research funding agencies, the academic journals, and the professional doctoral programs that train the next generation of legal scholars, are so underdeveloped that the tradition has never fully formed. The result is a system in which important legal questions are decided by courts without the benefit of a well-developed academic literature that could guide them, in which reform proposals are advanced without the benefit of systematic empirical research, in which international developments in legal theory are applied to Bangladesh's problems without the benefit of scholars who are deeply familiar with both the international theory and the local context, and in which generations of talented legal minds have been trained to replicate the existing system rather than to imagine and advocate for a better one.

Part Eight proposes to address this paradox through the establishment of a professional doctoral program in law in Bangladesh. The program, designated as the Doctor of the Science of Law (SJD), will be the highest academic degree in Bangladeshi legal education, designed to train the scholar-practitioners who will lead the development of legal scholarship, legal education, and legal reform in Bangladesh for the next generation. It will be a program of genuine intellectual rigor, modeled on the best international practice while being specifically designed for the Bangladeshi context, and it will be embedded in a set of institutional arrangements, funding structures, and professional norms that give it the support it needs to succeed.

The argument of this Part moves through the philosophy of doctoral legal education, the comparative experience of doctoral programs in other jurisdictions, the specific design of the SJD program for Bangladesh, the institutional arrangements and governance structures required to support it, the funding and scholarship framework that will make it accessible to talented candidates who lack independent financial means, the relationship between the SJD and the specialist accreditation framework developed in Part Seven, and the broader question of how doctoral legal education connects to the development of Bangladesh as a center of legal scholarship and legal reform leadership in South Asia. Throughout, the argument maintains the jurisprudential seriousness and the contextual specificity that have characterized this commentary throughout its Parts.

CHAPTER SEVENTY-FOUR: THE PHILOSOPHY OF DOCTORAL LEGAL EDUCATION

Section 74.1: What a Doctoral Degree in Law Is and What It Is For

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The Doctor of Juridical Science, known by its Latin designation Scientiae Juridicae Doctor or SJD, is the terminal research degree in law. It is the highest academic qualification that a legal scholar can hold, representing not merely mastery of a body of legal knowledge but the demonstrated capacity to contribute original knowledge to the discipline, to advance the understanding of law in ways that no prior scholar has achieved, and to sustain the rigorous, disciplined intellectual labor that genuine scholarly contribution requires. The SJD is a different kind of degree from the LLB, the LLM, or any other graduate qualification in law, because it certifies not professional competence or specialized knowledge but the capacity for original intellectual production.

This distinction between professional education and scholarly education is fundamental and must be understood clearly before the design of the SJD program can be addressed intelligently. The LLB trains lawyers to identify and apply the law in service of clients. The LLM provides advanced specialist knowledge in a particular field. The SJD trains legal scholars to investigate the law systematically, to identify its presuppositions and their justifications, to trace its historical development and the contingencies that shaped it, to analyze its effects on the people it governs, to compare it with alternative legal arrangements in other systems, and ultimately to propose modifications based on principled argument and empirical evidence. The SJD graduate who pursues an academic career brings to the classroom not merely a practitioner's knowledge of what the law is but a scholar's understanding of why it is what it is, what it could be otherwise, and what considerations should guide the choices between alternatives.

The question of what legal scholarship is and what makes it valuable is itself a contested one in the jurisprudential literature, and any serious design of a doctoral program in law must engage with it. The American Law Institute's series of debates on legal scholarship in the 1990s and 2000s, the Harvard Law Review symposia on the future of legal scholarship, and the more recent debates about empirical legal studies, doctrinal scholarship, and interdisciplinary legal research have all engaged with the question of what counts as excellent legal scholarship. These debates have continuing relevance in 2024 and 2025, as the integration of artificial intelligence into legal research creates new questions about what distinctive contribution human legal scholars can make.

At one end of the spectrum, a purely doctrinal conception of legal scholarship focuses on the careful analysis and synthesis of existing legal materials, identifying the structure of doctrine, tracing its internal logic, identifying its inconsistencies, and proposing resolutions. The great treatises of legal history, from Blackstone's Commentaries to Williston on Contracts to Wigmore on Evidence, exemplify this tradition. Doctrinal scholarship of this kind remains valuable, particularly in legal systems like Bangladesh's where comprehensive analytical treatises on many areas of law simply do not exist. A definitive, rigorous doctrinal treatment of Bangladeshi company law, of the constitutional law of fundamental rights, of the law of evidence as applied in Bangladeshi courts, or of Islamic personal law as administered by the family courts, would be a scholarly contribution of genuine significance and practical value.

At the other end of the spectrum, interdisciplinary legal scholarship draws on the methods and insights of economics, sociology, history, political science, philosophy, psychology, and other disciplines to understand law as a social phenomenon. The law and economics movement,

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associated with Richard Posner, Gary Becker, and the Chicago School, brought economic analysis to bear on legal rules in ways that transformed both legal scholarship and legal policy across many fields. Socio-legal studies, associated with scholars like Roger Cotterrell, Boaventura de Sousa Santos, and in the South Asian context Rajeev Dhavan and Upendra Baxi, examined law as embedded in social relations of power, culture, and meaning rather than as an autonomous system of norms. Critical legal studies, associated with Roberto Unger, Duncan Kennedy, and Morton Horwitz, questioned the internal coherence of legal doctrine and the claim that legal reasoning was genuinely distinguishable from political judgment. Feminist jurisprudence, associated with Catharine MacKinnon, Robin West, and Drucilla Cornell, analyzed law's construction of gender and its complicity in the subordination of women. Critical race theory, associated with Derrick Bell, Kimberle Crenshaw, and Richard Delgado, examined law's relationship to the construction and perpetuation of racial hierarchy.

Each of these movements has produced important insights and has shaped the legal systems and legal cultures of the countries in which it developed. But their direct application to Bangladesh requires careful mediation, because they were developed primarily in the Anglo-American context and their presuppositions reflect that context in ways that may or may not translate to the Bangladeshi situation. The task of the Bangladeshi SJD program is not to produce scholars who apply the frameworks of American legal theory to Bangladeshi problems without adaptation, but to produce scholars who bring international theoretical sophistication to the analysis of Bangladeshi law in ways that are genuinely illuminating rather than merely fashionable. This requires, above all, scholars who know both the international theoretical literature and the Bangladeshi legal, social, and cultural context with equal depth.

Between the purely doctrinal and the radically interdisciplinary extremes, there is a rich middle ground of legal scholarship that engages seriously with both legal doctrine and extra-legal context, that grounds theoretical arguments in the specifics of legal texts and institutional practice, and that produces insights that are simultaneously intellectually sophisticated and practically relevant. This middle ground is the most appropriate aspiration for a new doctoral program in a country like Bangladesh, where the primary needs are for scholars who can illuminate the law in its specificity and guide its reform in its practical dimensions, rather than for scholars whose primary contribution is to the abstract theoretical debates of the international legal academy.

Section 74.2: The Scholar-Practitioner Ideal

The design of the Bangladesh SJD program is animated by what this commentary calls the scholar-practitioner ideal: the conviction that the best legal scholars are those whose scholarship is grounded in genuine understanding of law in practice, and that the best legal practitioners are those whose practice is informed by genuine engagement with legal scholarship. This ideal is not a new one: the great common law judges and advocates of the eighteenth and nineteenth centuries, figures like Lord Mansfield, William Murray, whose jurisprudence transformed English commercial law, and Sir Frederick Pollock, who combined scholarly distinction with active professional involvement, embodied exactly this ideal. In the Islamic jurisprudential tradition, the great mujtahids were simultaneously scholars of the highest intellectual distinction

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and practical advisers to rulers, merchants, and ordinary people on the legal questions of their daily lives.

The scholar-practitioner ideal has been eroded in many contemporary legal systems by the increasing specialization and professionalization of both legal practice and legal scholarship. The law school professor who has never practiced law and the senior advocate who has never engaged seriously with legal scholarship are both, in important respects, impoverished by their narrow formation. The practitioner who has no engagement with scholarship misses the theoretical frameworks that illuminate the patterns and principles beneath the surface of individual legal problems. The scholar who has no engagement with practice misses the ways in which law actually operates in the world, the gaps between the law in the books and the law in action, and the practical constraints and pressures that any reform proposal must navigate to be implementable.

The Bangladesh SJD program is designed to produce graduates who embody the scholar-practitioner ideal in contemporary form. This means that the program will be open not only to full-time academic researchers but also to practitioners who wish to develop their scholarly capacity while continuing to practice, through part-time and flexible study arrangements that are described in detail in the sections on program design. It means that the dissertation research will be oriented toward questions that have genuine practical significance as well as theoretical depth. It means that SJD candidates will be expected to engage with the legal community, including through participation in law reform processes, policy dialogue, and professional development activities, throughout their doctoral studies. And it means that the supervision provided to SJD candidates will include both academic supervisors who guide the scholarly dimensions of the research and practitioner advisers who help candidates to ground their scholarship in the realities of legal practice.

The scholar-practitioner ideal is particularly important in the Bangladeshi context because of the acute need for intellectually informed leadership in legal reform. Bangladesh's legal system is at a pivotal moment, as documented throughout this commentary. The reforms proposed in the various Parts of this textbook, from the reconstruction of the Bar Council to the development of clinical legal education to the establishment of a specialist accreditation framework, all require intellectual leadership of a particular kind: leadership that combines deep knowledge of the legal system's history and current operation with principled analysis of the alternatives, with understanding of the international comparative experience, and with the ability to communicate complex arguments persuasively to diverse audiences including legislators, judges, practitioners, and the public. SJD graduates who embody the scholar-practitioner ideal are exactly the kind of intellectual leaders that this reform moment requires.

Section 74.3: Knowledge Production as a National Interest

In the discourse about legal reform in Bangladesh, the question of legal scholarship is sometimes treated as a luxury, an academic indulgence that can be addressed after the more pressing practical reforms have been implemented. This view is mistaken, and it must be challenged directly because it has practical consequences: the absence of legal scholarship is not a neutral

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condition that reforms can proceed without. It is an active deficiency that compromises the quality of reform in all the ways that the preceding paragraph identified.

Consider the question of judicial reform, which has been at the center of Bangladeshi legal policy debate since the Judicial Reform Roadmap announced by Chief Justice Syed Refaat Ahmed in September 2024. The quality of judicial reform proposals depends on the quality of the evidence and analysis available to those designing them. Do delays in Bangladeshi courts have the same causes as delays in other legal systems, or do they have distinctive local causes that require distinctive local solutions? What is the evidence on the effects of different procedural reforms on delay reduction in comparable systems? What are the consequences of judicial reform for access to justice for different segments of the population? What are the constitutional limits on the reform of judicial appointment processes? All of these questions are empirical and analytical in ways that require sustained scholarly investigation, not merely practical intuition. In jurisdictions with robust legal scholarship traditions, this kind of research is available to inform reform processes; in Bangladesh, it largely is not, and the reform processes accordingly proceed with less evidential support than they should have.

The development of legal scholarship in Bangladesh is therefore a matter of national interest, not merely of academic concern. It is a condition for the intelligent reform of the legal system, for the quality of judicial decision-making, for the effectiveness of legislative drafting, and for Bangladesh's ability to participate as an informed voice in the international legal conversations that increasingly shape domestic law. The WTO framework, international investment law, international human rights law, international environmental law, and the emerging law of digital technology all have profound effects on Bangladeshi law and policy, and Bangladesh's ability to shape these frameworks in ways that serve its interests depends on having scholars who understand them deeply enough to engage in their development rather than merely to receive their products.

The 2025 Global Scholars Academy organized by the Harvard Law School's Institute for Global Law and Policy, which explicitly welcomed applications from scholars from the Global South working on policy challenges of particular concern to Global South communities, reflects a growing international recognition that the global legal academy has been dominated by Northern perspectives and that the development of strong legal scholarship traditions in the Global South is a priority for the health of international legal culture as well as for the development of the countries concerned. Bangladesh's participation in this global conversation, as a country with a legal system of genuine complexity and interest, depends on having scholars who can engage at the level that international legal discourse requires.

CHAPTER SEVENTY-FIVE: COMPARATIVE MODELS OF DOCTORAL LEGAL EDUCATION

Section 75.1: The American SJD Model

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The American SJD is the model with which any English-language discussion of doctoral legal education must begin, because the American law schools offer the most numerous and in many respects the most developed SJD programs, and because the American SJD has been the primary doctoral destination for legal scholars from South Asia including Bangladesh for several decades. Understanding what the American SJD offers, and what it does not offer, is essential for designing a Bangladeshi program that captures the former while addressing the latter.

The University of Michigan Law School's SJD program, as described on its website for the 2024 to 2025 academic year, is a program designed primarily to produce law professors at foreign universities. The program is highly selective, admitting a small number of exceptional candidates each year and providing them with generous multi-year financial support, including fellowships of approximately 2,900 dollars per month as of the 2024 to 2025 academic year. Michigan SJD candidates work closely with their degree committee and with the broader community of graduate law students and Michigan Law Research Scholars, and are expected to produce world-class dissertations and other original academic writings. The program is designed to be completed in three to five years, with candidates spending at least three years in residence in Ann Arbor. The primary career outcome is an academic appointment at a foreign law school, and the program is accordingly oriented toward the development of internationally competitive legal scholars who will return to their home countries to lead legal education there.

The University of Pennsylvania Carey Law School's SJD program focuses similarly on research and the production of original scholarship, with the degree granted upon successful completion and defense of a dissertation. Penn requires candidates to be in residence for the first year of the program, with residency after that period encouraged but not required. The program is particularly focused on candidates whose proposed research project indicates a strong likelihood of making a significant contribution to legal scholarship. Penn provides fellowships for eligible SJD candidates that include full tuition, health insurance, and a stipend, reflecting the recognition that doctoral legal education requires financial support to be genuinely accessible to the most talented candidates regardless of their financial backgrounds.

The George Washington University Law School's SJD program, as described in its 2025 to 2026 Law School Bulletin, requires candidates to complete full-time residence enrollment for no less than one academic year, to complete coursework of no less than eight credit hours normally within the first two years, and to complete and defend a dissertation within four calendar years. The GWU program is explicitly described as tailored to lawyers who seek to become law professors, scholars, or jurists, or who wish to engage in areas of the law requiring extensive research and writing. The program accepts non-US law school graduates who must demonstrate an excellent academic record from a non-US law school known for high academic standards, with the determination of adequacy made by the Graduate and International Programs Office.

These American programs share several features that are instructive for the design of the Bangladesh SJD. They all require a prior LLM degree as a prerequisite (with very limited exceptions), ensuring that candidates have developed graduate-level legal analytical skills before undertaking doctoral research. They all require a research proposal as a central element of the application, ensuring that candidates have a clear intellectual project and that faculty supervisors can be identified who have the expertise to guide it. They all require residence for at least part of

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the program, ensuring that candidates are integrated into the intellectual life of the institution and benefit from engagement with faculty and fellow scholars. And they all maintain small cohorts and high selectivity, ensuring that the supervisory resources of the program are deployed in ways that actually support individual scholarly development.

The limitations of the American SJD model for a Bangladeshi program are equally instructive. The American programs are designed primarily for candidates who will pursue academic careers in foreign countries; they produce scholars for other nations' law schools rather than for their own. The residence requirement in American programs effectively excludes practitioners who cannot take several years away from their professional lives. The financial model, even with fellowships, involves costs that exclude candidates who cannot live in an American city on a graduate student stipend for several years. And the scholarly culture of American legal academia, which prizes certain forms of interdisciplinary sophistication and publication in particular journals, may not be the most appropriate model for scholars whose primary mission is the development of Bangladeshi legal thought rather than participation in the international anglophone legal academy.

A Bangladesh-based SJD program can capture the best features of the American model, including the rigor of assessment, the depth of supervision, the commitment to original scholarship, and the development of internationally competitive research, while designing these features in ways that are appropriate to the Bangladeshi context. The program can accommodate both full-time residential candidates and part-time practitioner candidates. It can prioritize research that is simultaneously internationally competitive and locally significant. It can develop scholarship that engages with the international legal academy while being firmly grounded in Bangladeshi law, history, and context. And it can produce graduates who pursue both academic and senior practitioner careers, reflecting the scholar-practitioner ideal rather than the purely academic model of the American SJD.

Section 75.2: The English and Australian Models

The English and Australian traditions of doctoral legal education offer different models that are also instructive. The English PhD in law, as offered at Oxford, Cambridge, the London School of Economics, University College London, and other leading law schools, is a three to four year research degree that differs from the American SJD in several important respects. English PhD programs do not typically require a coursework component before the student begins work on the dissertation; the candidate works under the supervision of one or two supervisors from the outset, developing the dissertation proposal and then executing it through sustained research and writing. The English model places more emphasis on the individual supervisory relationship and less on structured coursework than the American model, reflecting a different pedagogical philosophy about how doctoral researchers develop.

The Oxford and Cambridge Faculties of Law maintain strong connections to the global comparative law community, and their doctoral programs attract candidates from across the Common wealth and beyond. The 2024 to 2025 South Asia activities at Oxford's Faculty of Law, which included the hosting of the 15th Annual South Asia Regional Rounds of the Jessup International Law Moot Court Competition in partnership with the Centre for Communication

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Governance at National Law University Delhi, illustrate the connections that the English doctoral programs maintain with South Asian legal scholarship. Several of Bangladesh's most distinguished legal academics and senior jurists hold Oxford or Cambridge doctoral degrees, and the influence of the English scholarly tradition on Bangladeshi legal thought is significant.

The Australian model of doctoral legal education, as practiced at the Australian National University, the University of Melbourne, the University of New South Wales, and other leading law schools, combines elements of the English and American models. Australian doctoral programs typically require a research thesis without a coursework component, similar to the English model, but operate in a more structured supervisory environment with mandatory progress reviews and milestones similar to the American model. Australian law schools have developed strong connections with South Asian legal scholarship, partly through their international student bodies and partly through deliberate institutional commitments to comparative and transnational legal research. The ANU College of Law in particular has developed a significant tradition of research on international law, Asian legal systems, and comparative constitutional law that is directly relevant to Bangladesh.

The University of Toronto Faculty of Law in Canada offers a JSD program (equivalent to the American SJD) that is notable for its emphasis on interdisciplinary legal scholarship and its connections to the political philosophy and legal theory traditions of the Toronto philosophy department. The Toronto approach, associated with scholars like Joseph Raz, whose work on the nature of authority and the rule of law has had profound influence on Anglo-American jurisprudence, and Ronald Dworkin's long association with Toronto's intellectual culture, represents a particularly sophisticated integration of legal and philosophical analysis that is directly relevant to the jurisprudential dimensions of the Bangladesh reform agenda.

The comparative lesson from these different models is that there is no single correct design for a doctoral program in law, and that the appropriate design depends on the specific context, needs, and resources of the institution offering the program. A Bangladesh SJD program should draw on the best elements of all these traditions, adapting them for the specific conditions and aspirations of Bangladesh's legal academy, rather than simply transplanting any one model wholesale.

Section 75.3: Doctoral Legal Education in South Asia

India's experience with doctoral legal education is the most directly relevant comparative reference for Bangladesh, both because of the institutional similarities between the two countries' legal systems and because India has undergone significant developments in legal higher education since the establishment of the National Law Schools in the 1980s and 1990s that have direct parallels to what Bangladesh needs to achieve.

The Indian PhD in law, as offered at the National Law Universities, at Jawaharlal Nehru University, at the Delhi School of Economics, and at several other institutions, has been transformed since the NLU system's establishment. The early NLUs, particularly the National Law School of India University in Bangalore, established a model of legal education that was significantly more research-oriented and internationally engaged than the traditional Indian law

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school model. The development of PhD programs at these institutions, staffed by faculty with international doctoral degrees and oriented toward international standards of legal scholarship, has produced a generation of Indian legal scholars who are genuinely competitive in the international legal academy.

The Law Commission of India's 2020 reports on legal education reform addressed the development of doctoral legal education explicitly, calling for the strengthening of research capacity at law schools, the development of internationally competitive doctoral programs, and the reform of the LLM degree to provide genuine specialist training that could serve as preparation for doctoral research. These proposals parallel the proposals in this Part for Bangladesh, and their development in India provides both encouragement and caution: encouragement that the reform of legal doctoral education is feasible in a South Asian context, and caution about the institutional and political obstacles that such reform must navigate.

Sri Lanka's law faculty at the University of Colombo has developed a doctoral program in law that is the most immediately comparable to what Bangladesh might establish, given the similarity in scale, the common colonial legal heritage, and the shared experience of post-independence legal development. The Sri Lanka program's challenges and achievements provide a practical reference point for what is achievable in a South Asian setting without the resources of India's National Law Universities.

Pakistan's legal academy has produced several distinguished scholars through international doctoral programs, but has not yet established a domestic doctoral program in law that has achieved international recognition. The Pakistani experience illustrates both the importance of international doctoral programs as training grounds for legal scholars in countries that do not yet have domestic programs of adequate quality, and the ultimate limitation of relying entirely on international programs: the scholars they produce often remain abroad or, when they return, find that the institutional environment of Pakistani law schools does not support the maintenance of scholarly productivity that international programs fostered.

CHAPTER SEVENTY-SIX: THE DESIGN OF THE BANGLADESH SJD PROGRAM

Section 76.1: The Institutional Home

The first and most consequential design question for the Bangladesh SJD program is where it will be housed. The institutional home of the program determines its governance, its faculty, its culture, its resources, and ultimately its intellectual identity. The decision deserves careful analysis rather than a simple default to the obvious candidate.

The obvious candidate is the Faculty of Law of the University of Dhaka. The Dhaka University law faculty is the oldest and most established law faculty in Bangladesh, with a history that stretches back to 1921. It has a faculty roster that includes some of Bangladesh's most distinguished legal scholars, and it occupies a position of cultural and institutional prestige within the Bangladeshi academy that no other law school can match. A SJD program based at

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Dhaka University would benefit from this prestige and from the institutional infrastructure of a major public research university.

But the obvious candidate is not necessarily the right one. The Dhaka University law faculty faces the same structural problems that this commentary has identified throughout: overcrowding, inadequate research funding, overloaded teaching commitments, and a professional culture that has not prioritized scholarly productivity in the way that a doctoral program's intellectual environment requires. The faculty's best scholars are stretched across enormous teaching loads that leave limited time for the supervision of doctoral research. Its library resources, while better than most Bangladeshi law schools, fall short of what a genuinely competitive doctoral program requires. And its governance structures, which are subject to the same political pressures as other parts of Bangladeshi higher education, may not be able to maintain the intellectual independence that doctoral research requires.

The alternative is to establish the SJD program as a joint program shared across several leading law schools, with a dedicated Doctoral Research Center that provides the shared research infrastructure, including library resources, research seminars, visiting scholar programs, and administrative support, that the program requires. The participating institutions might include Dhaka University, BRAC University, North South University, the University of Chittagong, and potentially the Bangladesh University of Professionals, each contributing faculty supervisors and research expertise while sharing the program's infrastructure.

A joint program model has several advantages. It allows the SJD program to draw on the full range of faculty expertise across participating institutions, increasing the probability that any candidate can find a supervisor with the expertise to guide her or his specific research project. It distributes the costs of the shared infrastructure across multiple institutions, making the program more financially sustainable. It creates connections between different institutional cultures and approaches to legal scholarship, enriching the intellectual environment of the program. And it avoids the concentration of doctoral education at a single institution, which could create bottlenecks and make the program's quality overly dependent on the strength of one law school at any given time.

The Doctoral Research Center that manages the joint program should be located in Dhaka, given the concentration of legal resources, libraries, courts, and professional networks in the capital, but should have affiliate offices at participating universities outside Dhaka to support candidates who are based in other cities. The Center should be governed by a Board of Governors drawn from the participating universities and from external legal and academic stakeholders, with a Director of sufficient scholarly stature and administrative capacity to lead the program's development.

Section 76.2: Admission Requirements and Selection

The admission process for the SJD program must balance the aspiration for genuine excellence with the recognition that Bangladeshi legal academia is at an early stage of development and that the pool of candidates who meet international standards of doctoral readiness is currently limited but can be developed over time. Setting admission requirements at such a high level that no one

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can meet them serves no purpose; setting them at so low a level that the degree's credibility is compromised from the outset is equally futile. The calibration of admission requirements is therefore one of the most important design decisions in the program.

The baseline educational prerequisite for admission to the Bangladesh SJD shall be the LLM degree, with a grade record that demonstrates academic distinction throughout the candidate's legal education. The LLM requirement mirrors the standard practice at American and some other programs and ensures that candidates have developed graduate-level legal analytical skills before undertaking doctoral research. The grade standard shall require that candidates have achieved a first-class or distinction grade in their LLM, demonstrating the kind of academic performance that predicts success at the doctoral level.

The prior degree requirement shall include recognition of LLM degrees from both Bangladeshi and international institutions, with a mechanism for assessing the equivalence of international degrees to the standard expected of Bangladeshi institutions. Bangladeshi lawyers who have completed LLMs at Oxford, Cambridge, Harvard, Michigan, the London School of Economics, or other leading international law schools shall have these degrees fully recognized. Bangladeshi lawyers who have completed LLMs at domestic universities shall be evaluated against the reformed LLM standards proposed in Part Three of this commentary.

Beyond the educational prerequisite, the most important element of the admission process is the research proposal. Every applicant for the SJD program shall be required to submit a research proposal of between four thousand and eight thousand words that sets out the research question they intend to investigate, the significance of that question for Bangladeshi law and for legal scholarship more broadly, the methodological approach they propose to use, the relevant literature they have engaged with, and the expected contribution of their research. The research proposal is the primary basis on which admissions decisions are made, because it reveals both the candidate's intellectual capacity and the quality of their proposed project in ways that grades and credentials alone cannot.

The research proposal shall be evaluated by a panel of faculty members with expertise in the relevant area, who will assess it against criteria including the significance and originality of the proposed research question, the candidate's demonstrated familiarity with the relevant literature, the feasibility of the proposed methodology and timeline, the clarity and analytical rigor of the writing, and the identification of a prospective supervisor who has agreed in principle to take on the candidate if admitted. The criterion of prospective supervisor availability is important: the SJD program can only admit candidates for whom it can provide adequate supervision, and the program's admission capacity at any given time is limited by the availability of faculty with the appropriate expertise.

Additional admission requirements shall include a writing sample of at least five thousand words demonstrating the candidate's ability to engage in sustained legal analysis, three letters of recommendation from academics or senior practitioners who can speak to the candidate's intellectual capacity and research potential, a personal statement describing the candidate's academic and professional background and explaining how the proposed doctoral research connects to her or his broader scholarly and professional aspirations, and evidence of English

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language proficiency for candidates whose primary academic language is not English. The English language requirement reflects the reality that engagement with the international legal academy requires the ability to read, write, and present research in English, even though the primary focus of the Bangladesh SJD is the development of Bangladeshi legal scholarship.

The admission process shall be conducted once per year, with a deadline in October and notifications in February, allowing admitted candidates to begin their programs in the following academic year. The small number of candidates admitted in each cycle, initially no more than ten to fifteen, will ensure that the supervisory and financial resources of the program can be deployed effectively.

Section 76.3: The Program Structure and Curriculum

The Bangladesh SJD program shall be structured as a three to five year program of doctoral research, with a mandatory coursework component in the first year followed by dissertation research and writing in the subsequent years. The program shall be available in both full-time and part-time formats, with full-time candidates expected to complete in three to four years and part-time candidates expected to complete in four to six years.

The first year of the program, which is mandatory for all candidates regardless of format, shall consist of a structured coursework and research development curriculum designed to build the scholarly foundations that all doctoral researchers need and to launch the candidate's specific research project. The curriculum in the first year shall consist of four components.

The first component is a seminar on Research Methodology in Law, which is a twelve-week intensive course covering the range of methodological approaches available to legal researchers: doctrinal methodology and its techniques of textual analysis, synthesis, and argument construction; socio-legal methodology and its techniques of qualitative and quantitative empirical research; historical methodology and its techniques of archival research, source criticism, and historical narrative; comparative methodology and its techniques of selecting and analyzing comparators; and interdisciplinary methodology and its techniques of drawing on insights from economics, sociology, political science, philosophy, and other disciplines. The seminar shall include substantial reading from the methodology literature and substantial supervised practice in applying different methodological approaches to legal questions.

The second component is a reading seminar on Legal Theory and Jurisprudence, which covers the major traditions of legal philosophy in a way that builds the theoretical vocabulary that all doctoral legal researchers need, regardless of their specific research area. The seminar shall cover natural law theory from Aquinas through Fuller and Finnis, legal positivism from Bentham and Austin through Hart and Raz, interpretivism in the Dworkinian tradition, critical legal theory in its various forms including feminist jurisprudence and critical race theory, law and economics, and the major currents of non-Western legal philosophy including Islamic jurisprudence and South Asian traditions. The seminar shall be anchored in the primary texts of these traditions rather than in secondary summaries, and shall require candidates to engage with the texts analytically rather than descriptively.

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The third component is a Research Seminar in the candidate's specific research area, which brings together candidates working in related areas with faculty experts and visiting scholars to discuss works in progress, current literature in the field, and methodological challenges specific to the area. These research seminars are the intellectual heart of the doctoral program; they are the space in which the candidate's research develops through sustained collegial engagement with both expert faculty and fellow researchers. The research seminars shall meet bi-weekly throughout the first year and continue throughout the candidate's time in the program, creating an ongoing intellectual community within each research area.

The fourth component is the Dissertation Proposal Development requirement. By the end of the first year, each candidate shall have developed a full dissertation proposal of between twelve thousand and eighteen thousand words, approved by the supervisory committee, that defines the research question, reviews the relevant literature comprehensively, specifies the methodological approach in detail, and presents an outline of the dissertation's argument and structure. The dissertation proposal is assessed by the supervisory committee and by an external examiner, and a candidate who does not produce an acceptable proposal by the end of the first year shall be required to address the deficiencies identified by the examiners before proceeding to full candidacy for the dissertation stage.

Following the successful completion of the first-year requirements and the approval of the dissertation proposal, the candidate advances to full candidacy and begins the dissertation research and writing stage. In this stage, the candidate works under the direction of the supervisory committee, meeting regularly with her or his primary supervisor and less frequently with the full committee, to conduct the research and write the dissertation. The supervisory committee shall consist of a primary supervisor who is a full-time faculty member of one of the participating institutions with expertise in the candidate's research area, a co-supervisor who may be from another participating institution or from an international partner institution, and an industry or practitioner adviser for candidates whose research has a significant practical dimension.

The dissertation shall be an original scholarly work of substantial length, with a target of seventy-five thousand to one hundred thousand words for full-time candidates, making an original contribution to the scholarly understanding of legal questions in the candidate's research area. The criterion of originality is fundamental and must be explained clearly to candidates at the outset: the dissertation must contribute knowledge that was not previously available, not merely synthesize or summarize what is already known. This original contribution may take several forms, including the construction of a new analytical framework for understanding an area of law, the conduct of empirical research that generates new factual knowledge about law's operation, the development of a novel normative argument about what the law should be and why, the application of established theory to a legal context in which it has not previously been applied, or the recovery of historical knowledge about law's development that has been lost or overlooked.

Section 76.4: Supervision, Monitoring, and Support

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The quality of doctoral supervision is the single most important determinant of doctoral program success. Research consistently shows, across all disciplines and all countries, that the quality of the supervisory relationship, more than any other factor including the quality of the institution, the level of financial support, or the quality of the coursework component, determines whether doctoral candidates complete their degrees and whether they produce scholarship of genuine quality. The Bangladesh SJD program must therefore invest significant attention and resources in developing the quality of supervision.

The primary supervisor's responsibilities shall include meeting with the candidate at least bi-weekly throughout the dissertation stage, reading and providing written feedback on drafts within two weeks of their submission, providing guidance on research methodology and scholarly writing as well as on the substance of the research, helping the candidate to identify and connect with relevant scholars and practitioner networks both domestically and internationally, and providing honest assessment of the candidate's progress and of any concerns about the research's development. These are substantive responsibilities that require a genuine commitment of time and intellectual energy, and they must be taken into account in the calculation of supervisors' teaching loads and other professional obligations.

The co-supervisor provides additional specialist expertise and an alternative intellectual perspective that complements that of the primary supervisor. The co-supervisor shall meet with the candidate at least monthly and shall read and comment on dissertation drafts, but with less frequency and detail than the primary supervisor. The co-supervisor from an international partner institution brings the additional benefit of connecting the candidate to international scholarly networks and to the standards and expectations of international legal academia.

The practitioner adviser, where appointed, provides guidance on the practical dimensions of the research, helping the candidate to understand how the legal rules and institutions being studied actually operate in practice, to identify practical constraints that any reform proposal must address, and to connect the research to the professional and policy contexts in which its findings will be most relevant. The practitioner adviser is not a supervisor in the academic sense and does not provide academic assessment of the dissertation, but her or his practical knowledge and professional connections are an important resource for the scholar-practitioner ideal that the program embodies.

The program shall conduct formal progress reviews for every candidate at six-month intervals throughout the dissertation stage. These reviews, conducted by the supervisory committee with the possibility of external observer participation, shall assess the candidate's progress against the timeline established in the dissertation proposal, identify any methodological, analytical, or writing challenges that require additional support, and determine whether the candidate's research is on track to produce a dissertation that meets the required standard. Candidates whose progress is unsatisfactory, for any reason including personal circumstances, methodological difficulties, or inadequate supervisory support, shall receive a formal intervention plan specifying what steps will be taken to address the problem and what the consequences of continued unsatisfactory progress will be.

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The Bangladesh SJD program shall develop specific provisions for supporting candidates who experience difficulties related to their gender, family responsibilities, or professional circumstances. Women candidates who take maternity leave shall have their candidacy clocks paused for the duration of the leave. Candidates who experience professional emergencies requiring extended attention to their practice shall have access to a formal suspension of candidacy of up to twelve months, after which the candidacy may be resumed. These provisions are not concessions to lower standards but recognitions that the diversity of the candidate population, which the scholar-practitioner ideal requires, demands a diversity of support arrangements that a rigid one-size-fits-all structure cannot provide.

Section 76.5: The Dissertation Defense and Award

The culmination of the SJD program is the dissertation defense, which is the formal assessment process through which the candidate demonstrates to an examining committee that the dissertation meets the required standard and that the candidate can defend its argument and methodology against expert scrutiny. The dissertation defense is not a formality; it is a genuine intellectual examination in which the candidate is expected to demonstrate not merely that she or he has written the dissertation but that she or he understands it deeply enough to explain, justify, and modify its arguments in response to questioning.

The examining committee for the dissertation defense shall consist of the primary supervisor (who participates but does not vote on the assessment decision, given her or his investment in the candidate's work), an internal examiner from one of the participating institutions who has not been involved in the supervision, and an external examiner from an institution outside Bangladesh who has no prior connection to the candidate or the supervisory committee. The external examiner requirement is essential for maintaining the international comparability of the SJD degree and for ensuring that the program's standards are not gradually lowered by the institutional inertia that can affect assessment processes in any closed system.

The dissertation shall be submitted to the examining committee at least two months before the defense, giving examiners adequate time to read it carefully and to prepare questions. The defense itself shall last no less than two hours and shall include an opening statement by the candidate of approximately twenty minutes describing the dissertation's argument and contribution, followed by questioning by the examiners on any aspect of the research. The examiners' questions shall be directed not merely at testing the candidate's knowledge of the dissertation's content but at exploring the limits of the analysis, the alternative approaches that might have been taken, the implications of the findings for other areas of law, and the candidate's understanding of the scholarly and practical context within which the research is situated.

The possible outcomes of the defense shall be: pass with no corrections required, pass subject to minor corrections, pass subject to major revisions, and fail. A fail decision, which should be very rare given the progress monitoring throughout the program, may be accompanied by an offer of a second attempt after a defined period of further work. The decisions of the examining committee shall be final subject only to a procedural appeal process that may be invoked if the candidate believes that the examination was not conducted in accordance with the program's regulations.

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CHAPTER SEVENTY-SEVEN: FUNDING, SCHOLARSHIPS, AND FINANCIAL ARCHITECTURE

Section 77.1: The Funding Model

The financial sustainability of the Bangladesh SJD program is as important as its intellectual design. A doctoral program that cannot fund its candidates, support its faculty supervisors, maintain its research infrastructure, or sustain the administrative capacity it requires will not survive, regardless of the quality of its design. The funding model must therefore be developed with the same rigor and specificity as the academic design, and it must be honest about the resources required and the sources from which they can realistically be obtained.

The primary operating costs of the SJD program include the costs of candidate stipends and fee waivers, the costs of additional supervisory time for participating faculty members, the costs of the Doctoral Research Center's infrastructure including library resources, administrative staff, seminar rooms, and digital research tools, the costs of visiting scholar and international examiner programs, and the costs of program administration and quality assurance. These costs are substantial, and any proposal that underestimates them will produce a program that is chronically underfunded and unable to maintain the quality it promises.

The funding sources for the program shall include several streams that together provide a sustainable financial base. The first stream is government funding, through a dedicated doctoral research fund administered by the University Grants Commission of Bangladesh. The government's interest in the development of legal scholarship and legal education reform, demonstrated by the broader reform agenda of which this commentary is part, justifies a direct government investment in doctoral legal education as a public good. The government funding stream shall cover the core infrastructure costs of the Doctoral Research Center and shall provide partial support for candidate stipends.

The second stream is international development funding, from agencies including the UNDP, the World Bank, the Asian Development Bank, and bilateral development organizations such as USAID, UKAID, and the Japan International Cooperation Agency, all of which have existing programs supporting rule of law reform, legal education improvement, and institutional capacity building in Bangladesh. The SJD program's contribution to these development goals makes it an appropriate recipient of development funding, and the program's leadership should engage proactively with development agencies from the outset to build these funding relationships.

The third stream is international academic partnerships. Several of the world's leading law schools have active partnership programs with institutions in the Global South, through which they provide faculty exchanges, visiting scholars, joint supervision arrangements, and research grants. Harvard Law School's Institute for Global Law and Policy, which runs the Global Scholars Academy with explicit welcome for Global South participants, is one example of the kind of international partnership that can provide both financial resources and intellectual connection for the Bangladesh SJD. NYU School of Law's Hauser Global Scholars program,

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which selects international scholars from approximately forty-six countries for LLM programs with a view to building international legal scholarship capacity, is another model. The 2025 Global Scholars Academy faculty included scholars from SciencesPo, Harvard, NYU, SOAS, Melbourne Law School, Stellenbosch University, and Tilburg, reflecting a genuinely international network that the Bangladesh program should seek to join.

The fourth stream is private philanthropy. Bangladesh has a growing philanthropic sector, and the legal profession itself contains individuals and firms whose professional success gives them both the means and, potentially, the motivation to support the development of legal scholarship. The creation of named doctoral fellowships, funded by contributions from law firms, senior advocates, and individual donors, provides both a funding mechanism and a way to build the legal profession's investment in the development of legal scholarship. The waqf mechanism, discussed in Part Six and Part Seven, provides an Islamic philanthropic vehicle that is culturally resonant and institutionally appropriate for establishing permanent endowment funds to support doctoral candidates.

Section 77.2: Scholarship and Fellowship Architecture

The access of talented candidates to the SJD program must not be determined by their financial resources. Legal scholarship in Bangladesh needs the most intellectually gifted researchers it can attract, and if the doctoral program is accessible only to those who can self-fund their studies or who are already employed at institutions that will support their doctoral research, the talent pool from which it draws will be severely restricted. A comprehensive scholarship and fellowship architecture is therefore an essential element of the program's design.

The SJD Fellowship shall be the program's flagship financial support instrument. Full SJD Fellowships shall cover full tuition, a monthly living stipend set at a level that enables candidates to devote their full professional attention to doctoral research without financial distress, health insurance, and an annual research allowance to cover costs of data collection, conference attendance, research travel, and other legitimate research expenses. The full fellowship is intended to make full-time doctoral research financially feasible for candidates who would otherwise need to continue working in order to meet their financial obligations.

The availability of full fellowships shall be prioritized for candidates who meet all of the following criteria: demonstrated exceptional intellectual promise as reflected in their admission assessment, commitment to pursuing an academic career at a Bangladeshi law school following completion of the degree, and financial need as assessed by a transparent and consistent needs assessment process. The commitment to return to Bangladeshi legal academia is the critical condition: the full fellowship is an investment in the development of Bangladeshi legal scholarship, not a personal financial benefit to the individual, and it should be structured accordingly. Candidates who receive full fellowships and subsequently do not enter Bangladeshi legal academia for reasons within their control shall be required to repay a proportion of the fellowship value, on a graduated scale that reduces the repayment obligation the longer the candidate remains in Bangladeshi legal academia before leaving.

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Partial SJD Scholarships shall cover tuition and a research allowance but not a living stipend, and shall be available for candidates who are able to support themselves financially through part-time work or existing employment but who need assistance with the direct costs of doctoral study. These partial scholarships are particularly appropriate for practitioner candidates who are combining doctoral study with continuing professional practice, and who have professional income to support their living costs but may find the direct costs of tuition and research a significant financial burden.

International Exchange Fellowships shall support SJD candidates in spending one or two semesters at an international partner institution during their doctoral studies. The value of international research visits, in terms of access to library resources, engagement with international scholarly communities, and development of the candidate's international academic identity, is well-documented in the doctoral education literature. The international exchange fellowship shall cover travel costs, accommodation at the host institution, and a cost-of-living supplement during the period of the visit.

The program shall also maintain a Supervisor Support Fund to compensate faculty members for the additional time that doctoral supervision requires. Supervision of doctoral candidates is a significant professional responsibility that takes time from research and other activities, and faculty members who take on supervision responsibilities should be compensated through a combination of reduced teaching loads and direct financial recognition of supervisory work. Without adequate compensation for supervision, the most accomplished faculty members, who have the greatest demand for their time, will be reluctant to take on supervisory responsibilities, and the program will not be able to attract the supervisors it needs.

CHAPTER SEVENTY-EIGHT: THE RESEARCH AGENDA AND PRIORITY FIELDS

Section 78.1: Defining Bangladesh's Legal Research Priorities

The Bangladesh SJD program should not be a program without intellectual direction, in which individual research projects are chosen solely by individual candidates based on personal interest. While candidate intellectual initiative is essential and must be preserved, the program as a whole should be oriented toward research areas that are of particular importance for the development of Bangladeshi law and of Bangladeshi legal scholarship. This orientation should be achieved through incentive structures, including additional fellowship support for research in priority areas, rather than through restrictions on the topics that candidates may pursue.

The identification of research priorities is itself an intellectual exercise that should be conducted through a consultative process involving legal academics, practitioners, judges, policymakers, and civil society representatives. The following priority areas are proposed based on the analysis throughout this commentary; they are not intended to be exhaustive or permanent, and the program's governance structure should review and update the priority areas periodically as the landscape of Bangladesh's legal needs evolves.

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Constitutional and administrative law scholarship in Bangladesh is urgently needed. The Constitution of Bangladesh 1972, as amended through its seventeen amendments (including the constitutionally contested Fifth and Eighth Amendments), the restoration of the secular constitutional preamble and of democracy as a fundamental principle by the Fifteenth Amendment, and the ongoing controversies about caretaker government, judicial independence, and the boundaries of emergency power, all raise questions of profound constitutional significance that have not been adequately addressed by the academic literature. The PIL jurisprudence of the High Court Division, which has produced judgments of genuine constitutional importance on matters ranging from environmental protection to workers' rights to the rights of minorities, deserves systematic scholarly treatment that places it in comparative perspective and develops its jurisprudential significance. The administrative law framework, governing the relationship between citizens and the state in contexts ranging from licensing and regulatory decisions to the exercise of police powers, is almost entirely undeveloped in the Bangladeshi academic literature.

Family law and personal status scholarship is a second critical priority. The intersection of Islamic personal law, secular family legislation, and constitutional equality principles in Bangladesh's family law system creates jurisprudential questions of the greatest importance for the lives of millions of Bangladeshi citizens. The Muslim Family Laws Ordinance 1961, which remains one of the most significant pieces of legislation in Bangladesh's legal history, was the product of a particular moment in the politics of Islamic modernism that deserves careful historical and jurisprudential examination. The ongoing debates about marriage, divorce, maintenance, custody, and inheritance under Islamic law, and about the relationship of these debates to constitutional equality and international human rights standards, are intellectually rich and practically consequential in ways that require sustained scholarly engagement. The rights of religious minorities in the personal law system, including Hindu women's rights under the existing personal law framework, present questions of law and equality that are simultaneously sensitive and urgent.

Environmental and climate law scholarship is a third priority of particular urgency for a country as severely exposed to climate change as Bangladesh. The existing body of environmental law scholarship in Bangladesh is thin, but the legal framework, including the constitutional provisions, the Environment Conservation Act 1995, the Environment Court Act 2000, and the substantial PIL jurisprudence of the High Court Division, provides rich material for both doctrinal and interdisciplinary scholarship. The intersection of environmental law with property rights, with the rights of displaced communities, with the law of international climate agreements, and with the emerging law of loss and damage for climate-vulnerable countries all present research questions of the first importance for Bangladesh's engagement with the global climate crisis.

Labour and employment law scholarship is a fourth priority, given the enormous social and economic significance of the garment industry and the broader manufacturing sector for Bangladesh's development. The Bangladesh Labour Act 2006, the ongoing controversies about its implementation, the deaths at Rana Plaza in 2013 and subsequent accountability debates, the international pressure on Bangladesh's labour practices through trade linkages and corporate supply chain accountability frameworks, and the emerging questions about the labour rights of

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platform workers in Bangladesh's growing digital economy all present research questions that require both deep doctrinal knowledge and interdisciplinary engagement with labour economics, industrial relations theory, and international trade law.

Digital law and technology scholarship is a fifth priority, reflecting the transformative impact of digital technology on every area of law and the particular urgency of developing legally sophisticated responses to this transformation in Bangladesh. The Digital Security Act 2018, its replacement by the Cyber Security Act 2023, the debates about whether either Act adequately balances security concerns with freedom of expression and privacy rights, the emerging regulatory challenges of artificial intelligence, the law of electronic evidence and digital contracts, and the regulation of Bangladesh's growing financial technology sector all present research questions that require scholars with both legal expertise and genuine technical literacy about digital systems.

Section 78.2: Methodology and the Integration of Islamic Scholarship

The methodological pluralism of the Bangladesh SJD program, which has been emphasized in the description of the first-year methodology seminar, requires particular attention to the integration of Islamic jurisprudential methodology into the program's scholarly repertoire. This is not merely a matter of cultural sensitivity or political accommodation; it is an intellectual necessity for legal scholarship in Bangladesh.

The Islamic jurisprudential tradition, as this commentary has emphasized throughout its Parts, possesses methodological resources of genuine sophistication. The usul al-fiqh, the principles of jurisprudence that govern the derivation of legal rules from the foundational sources, constitutes a methodology of legal reasoning that has been refined over more than a thousand years of scholarly engagement. The maqasid al-sharia framework, which grounds legal analysis in the identification of the fundamental purposes of law, offers a teleological method of legal interpretation that can engage productively with contemporary human rights frameworks, with constitutional purposivism, and with the law and development literature. The concept of ijtihad, independent juristic reasoning, provides a framework for thinking about legal change and adaptation that is directly relevant to the reform challenges that Bangladesh faces.

SJD candidates who wish to engage with Islamic jurisprudential methodology in their doctoral research shall be encouraged and supported to do so. The program shall include among its supervisors at least two scholars with expertise in Islamic law and Islamic jurisprudential methodology, and shall maintain connections with institutions of Islamic learning, including the Islamic University of Kushtia and the Islamic Arabic University, that can provide additional expertise. The integration of Islamic jurisprudential methodology into the program's broader methodological repertoire shall be presented not as an alternative to the methods of the international legal academy but as a complementary resource that enriches the analysis of legal questions in Bangladesh's Islamic context.

The research of scholars like Mashood Baderin, whose work on international human rights and Islamic law has demonstrated the productive engagement between Islamic jurisprudential tradition and international human rights standards, and Khaled Abou El Fadl, whose work on

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Islamic legal interpretation addresses many of the same questions of authority, text, and reason that comparative constitutional scholars address, provides models for how Islamic jurisprudential methodology can be brought into productive dialogue with other legal methodologies. The Bangladesh SJD program should aspire to produce scholars who can work in this tradition of productive dialogue, neither reducing Islamic law to a set of fixed rules to be mechanically applied nor dismissing it as irrelevant to the project of modern legal reform.

Section 78.3: Empirical Legal Research and the Evidence Base for Reform

The development of empirical legal research capacity in Bangladesh is a research priority of particular practical importance. The reform proposals advanced throughout this commentary are grounded in the best available evidence, but much of that evidence is imperfect, partial, or based on international comparators whose relevance to Bangladesh has to be inferred rather than demonstrated. Systematic empirical research on Bangladesh's legal system, conducted with appropriate methodological rigor, would provide a far stronger evidentiary foundation for reform than is currently available.

The empirical research needs of Bangladesh's legal system are extensive. Basic data on the court system, including the number and types of cases filed, the time from filing to disposition at each stage, the rates of settlement, the rates of appeal, and the demographic characteristics of litigants, is poorly documented and inconsistently collected. Data on the legal profession, including the number and distribution of practicing advocates, their income levels, their demographic characteristics, and their specialization patterns, is similarly limited. Data on legal aid, including the number and types of cases handled by legal aid organizations, the outcomes for legal aid clients compared to unrepresented parties, and the demographic profile of legal aid beneficiaries, is underdeveloped. Data on access to justice, including survey evidence on the legal needs and legal capability of different segments of the Bangladeshi population, is rare and methodologically limited.

The Bangladesh SJD program should develop empirical legal research as a priority methodology, supporting candidates who wish to conduct systematic data collection and analysis on the legal system's operation. This requires specific support for the skills of empirical research, including statistical analysis, survey design, qualitative fieldwork methodology, and the legal and ethical frameworks governing research with human subjects. The program shall develop partnerships with Bangladesh's social science research institutions, including the Bangladesh Institute of Development Studies and the Centre for Policy Dialogue, to access empirical research expertise that complements the legal expertise of the law school faculty.

The publication of empirical research on Bangladesh's legal system in peer-reviewed journals and in policy reports that reach relevant decision-makers is as important as the production of the research itself. The Bangladesh SJD program shall support candidates in preparing their research for publication, through workshops on academic writing, guidance on journal selection and submission, and mentoring by experienced scholars who can provide feedback on manuscripts before submission. The development of a publication culture within the program, in which the dissemination of research is treated as a professional obligation rather than an optional extra, is an essential element of the scholarly culture that the program aims to build.

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CHAPTER SEVENTY-NINE: DOCTORAL EDUCATION AND THE DEVELOPMENT OF LEGAL ACADEMIA IN BANGLADESH

Section 79.1: The Faculty Development Function

The most immediate and significant contribution that the SJD program will make to the development of Bangladeshi legal scholarship is the development of the next generation of law school faculty. Bangladesh's law schools currently suffer from a severe shortage of faculty members who combine advanced research qualifications with genuine research productivity. The LLM degree, which is the highest qualification of most current faculty members, was not designed to train researchers; it is a specialist education degree that provides deep knowledge of a particular field but does not develop the independent research capacity, the scholarly writing skills, or the engagement with the scholarly literature that doctoral training provides.

The transformation of Bangladesh's law school faculty, from a body of practitioners-turned-teachers to a body of scholar-practitioners who combine teaching, research, and professional engagement, is a generational project that the SJD program can lead but cannot accomplish alone. The program's faculty development function requires active engagement with law schools across Bangladesh, identifying promising junior faculty members who would benefit from doctoral training, supporting them through the SJD program with full fellowships that allow them to undertake the research without financial pressure, and connecting them with the academic networks that will support their careers after graduation.

The institutions that employ faculty members who are pursuing doctoral research should be required, as a condition of the faculty's participation in the SJD program, to provide appropriate research leave and reduced teaching loads during the period of doctoral study. A faculty member who is expected to teach a full load of twelve courses per year while simultaneously conducting doctoral research will be able to do neither well. The development of institutional policies that support faculty research, including sabbatical provisions, research leave policies, and the recognition of research productivity in promotion decisions, is an institutional change that the law schools must be willing to make if they are serious about developing their faculty as researchers rather than merely as teachers.

The connection between the SJD program and the reformed LLM curriculum proposed in Part Three is particularly important for faculty development. Faculty members who have completed the SJD will be the primary teachers and supervisors of LLM students; their research expertise will shape the content and methodology of the LLM curriculum. The development of faculty research capacity and the reform of the LLM curriculum are therefore mutually reinforcing: better faculty produce better LLM programs, and better LLM programs produce better-prepared doctoral candidates.

Section 79.2: The Role of Academic Journals and Publication Venues

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The development of legal scholarship requires not only the training of researchers and the conduct of research but also the publication infrastructure through which research is disseminated and evaluated. Bangladesh currently lacks a peer-reviewed law journal of international quality that provides a publication venue for Bangladeshi legal scholarship and a platform for the engagement of Bangladeshi scholars with the international legal academy. The Dhaka University Law Journal, the only significant academic law journal in Bangladesh, has historically published more in the nature of student legal writing than peer-reviewed original scholarship of international standard, and has not established the reputation in the international legal academy that would make it a venue of genuine significance for scholarly careers.

The Bangladesh SJD program shall sponsor the establishment of a new academic law journal, the Bangladesh Journal of Legal Studies, which shall be peer-reviewed to international standards, published semi-annually, and available in both print and open-access digital formats. The journal shall be governed by an Editorial Board composed of Bangladeshi scholars and international advisory editors of recognized distinction, and shall publish research from Bangladesh and on Bangladeshi law by both Bangladeshi and international scholars. Importantly, the journal shall not be restricted to doctrinal legal scholarship but shall publish empirical legal research, legal history, comparative law, law and development scholarship, and Islamic jurisprudential research, reflecting the methodological pluralism of the SJD program itself.

The creation of a high-quality peer-reviewed journal is both a scholarly priority and a reputational investment: a law journal whose articles are peer-reviewed by international scholars and whose publication in the journal is recognized as a mark of scholarly quality provides an essential incentive for the production of excellent research. Without a credible publication venue, the graduates of the SJD program will find it difficult to build the publication records that academic careers require, and the research conducted under the program's auspices will have limited impact on the development of Bangladeshi law.

In addition to the new journal, the SJD program shall develop systematic support for candidates and graduates in publishing their research in existing international journals. The Journal of Comparative Law, the Statute Law Review, the Journal of the Indian Law Institute, the Asian Journal of Comparative Law, and the numerous American, British, and Australian law reviews that publish comparative and international legal scholarship all represent potential venues for Bangladeshi legal scholarship. The program shall maintain a publication mentoring service that helps candidates identify appropriate journals for their work, prepare manuscripts for submission, respond to reviewers' comments, and navigate the process of academic publication in international journals.

Section 79.3: Research Centers and Clusters

The Bangladesh SJD program shall support the development of research centers or clusters within the Doctoral Research Center, organized around the priority research areas identified in Section 78.1. These research centers shall bring together SJD candidates, faculty members, and practitioner affiliates working in related research areas, creating communities of scholarly inquiry that are larger and more intellectually rich than any individual candidate-supervisor relationship.

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The proposed research centers are the Center for Constitutional and Administrative Law Research, the Center for Family Law and Personal Status Research, the Center for Environmental and Climate Law Research, the Center for Labour and Employment Law Research, and the Center for Digital Law and Technology Research. Each center shall have a Director who is a faculty member with expertise in the relevant field, a small core of research associates who are SJD candidates and post-doctoral fellows, and an advisory group that includes practitioners, judges, and policymakers with relevant expertise. The centers shall organize regular seminars, workshops, and conferences, publish working papers and policy briefs, engage with law reform processes and parliamentary committees, and develop the kind of sustained institutional presence that individual researchers working in isolation cannot achieve.

The development of research centers also serves an important function in relation to the program's international partnerships. International law schools and research institutions are more likely to form productive partnerships with a center that has an established research program, a recognized scholarly identity, and the institutional capacity to host visiting scholars and to engage in joint projects, than with an individual researcher who may move on or whose research agenda may change. The research centers provide the institutional infrastructure for the long-term development of international scholarly partnerships that are essential for Bangladeshi legal scholarship to develop its international connections.

CHAPTER EIGHTY: THE SJD, LEGAL REFORM, AND THE ROLE OF THE SCHOLAR-PRACTITIONER

Section 80.1: Doctoral Legal Research and Law Reform Processes

The connection between legal scholarship and law reform is a central element of the Bangladesh SJD program's rationale. This commentary has argued throughout that the quality of legal reform depends critically on the quality of the intellectual and evidential foundations on which reform proposals are built. The absence of legal scholarship has not prevented reform in Bangladesh; it has simply meant that reform has proceeded on weaker intellectual foundations than it should have, with less systematic evidence, less awareness of comparative experience, and less rigorous analysis of the likely consequences of proposed changes than genuinely informed reform requires.

The SJD program shall actively cultivate the connection between doctoral research and law reform processes through several specific mechanisms. First, the program shall establish a formal relationship with the Law Commission of Bangladesh, through which SJD candidates and graduates who are conducting research in areas that the Law Commission is investigating can participate in the Commission's work as research associates. This relationship benefits both parties: the Law Commission gains access to research capacity that it would not otherwise have, and the candidates gain access to the policy processes within which their research can have immediate practical impact.

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Second, the program shall establish a relationship with the parliamentary Standing Committee on Law, Justice and Parliamentary Affairs, through which scholars can provide expert testimony on proposed legislation in their areas of expertise. The development of a culture in which parliament calls on legal scholars for expert evidence, rather than relying entirely on the advice of practitioners who may have commercial interests in the outcome, is an important institutional reform in itself, and the SJD program can contribute to this cultural change by making available a pool of scholars whose expertise is relevant to legislative questions.

Third, the program shall develop a policy brief publication series that translates scholarly research into accessible policy guidance for non-specialist audiences including legislators, administrators, judges, and civil society organizations. The translation of academic research into policy-relevant language is a skill that must be deliberately developed; it does not come automatically from the production of academic writing, which is addressed to a specialist audience using disciplinary conventions and technical language that non-specialists cannot always access. The policy brief series, written by SJD candidates and graduates under editorial guidance, will develop this translation skill while also extending the program's scholarly reach to audiences that academic journals cannot effectively serve.

Section 80.2: The Doctor's Return: Building Academic Careers in Bangladesh

One of the most persistent failures of doctoral education for scholars from developing countries is the brain drain: doctoral graduates who complete their degrees in leading international institutions and then remain abroad, drawn by better research environments, higher salaries, and more supportive professional cultures than their home institutions can offer. This pattern has affected Bangladesh significantly: Bangladeshi lawyers who complete LLMs and PhDs at Oxford, Cambridge, Harvard, or other leading institutions frequently remain in those institutions or move to international careers, leaving the domestic legal academy deprived of the talent it needs.

The Bangladesh SJD program must be designed with the brain drain problem directly in mind. The solution is not to restrict the mobility of Bangladeshi scholars, which would be both unenforceable and unethical, but to make Bangladesh an intellectually and professionally attractive environment for excellent legal scholars. This requires a combination of the institutional reforms proposed throughout this commentary, including the development of research centers, the creation of peer-reviewed publication venues, the establishment of adequate research funding, and the reform of academic promotion systems to reward research productivity, together with the development of a professional culture that values scholarship and the scholar-practitioner model.

The fellowship conditions discussed in Section 77.2, which include a commitment to return to Bangladeshi legal academia as a condition of the full SJD Fellowship, provide a partial incentive structure. But the primary incentive must be positive rather than contractual: Bangladesh's law schools must become places where excellent scholars want to work, rather than places they return to out of obligation. The development of the research infrastructure, the scholarly culture, and the professional rewards of Bangladeshi legal academia is therefore not merely an

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educational project but a retention strategy that is essential for the program's long-term sustainability.

The development of joint appointments, visiting fellowship programs, and sabbatical exchange arrangements with international partner institutions provides a mechanism for retaining excellent Bangladeshi scholars by giving them ongoing access to international scholarly communities without requiring them to leave Bangladesh permanently. A Bangladeshi scholar who spends one semester per year at an international partner institution, maintaining active research connections and publishing in international journals, while spending the other semester teaching and supervising at a Bangladeshi institution, is an asset to both the international and the domestic academic communities and has no need to choose permanently between them.

Section 80.3: The SJD and the Judiciary

The relationship between legal scholarship and the judiciary deserves specific attention in the Bangladesh context, where the development of constitutional jurisprudence has been one of the most significant features of the post-independence legal system. The High Court Division's PIL jurisdiction and the Supreme Court's constitutional authority create a body of case law that is both a product of legal reasoning and a subject for scholarly analysis.

The interaction between legal scholarship and judicial decision-making is complex and has been analyzed by scholars including Fred Schauer, who has examined how academic legal scholarship actually influences judicial decisions, and Sanford Levinson, who has analyzed the relationship between constitutional theory and constitutional practice. In Bangladesh, the influence of academic scholarship on judicial decision-making is less systematic than in some other jurisdictions, partly because the academic literature is thin and partly because the tradition of judicial engagement with academic commentary is not as developed as in, for example, the United States or Canada.

The SJD program can contribute to developing this relationship in several ways. SJD candidates and graduates who produce high-quality doctrinal and jurisprudential scholarship on areas of constitutional and administrative law that courts regularly address are providing resources that judges can use in developing their reasoning. The development of treatises and commentaries on constitutional provisions, on procedural law, and on specific statutory frameworks gives courts access to systematic scholarly analysis that the preparation of individual pleadings and judgments cannot provide. And the engagement of scholars with judicial training programs, which are an important element of the broader judicial reform agenda, creates direct channels of communication between legal scholarship and judicial practice.

The development of a Bangladesh tradition of judicial engagement with legal scholarship, in which judges cite and engage with academic literature in their judgments, would be a significant development in the maturation of Bangladeshi legal culture. The American tradition, in which Supreme Court justices regularly cite legal scholarship in their opinions and in which legal academics regularly appear as amici curiae in major cases, provides one model of this engagement, though it reflects a particular institutional and cultural context that cannot simply be transplanted. The Canadian and British traditions of judicial engagement with academic

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commentary provide more immediately relevant models for Bangladesh, given the closer institutional similarity of the Commonwealth legal systems.

CHAPTER EIGHTY-ONE: CONTROVERSIES, CRITIQUES, AND THE POLITICAL ECONOMY OF DOCTORAL LEGAL EDUCATION

Section 81.1: The Relevance Critique

The most common critique of doctoral legal education in developing country contexts is the relevance critique: the argument that doctoral legal research, which is often abstract, theoretical, or comparative in character, is a luxury that developing countries cannot afford when the practical needs of the legal system are so pressing and so unaddressed. On this view, the resources that would be invested in an SJD program would be better spent on training more lawyers, improving court infrastructure, expanding legal aid services, or implementing the practical reforms that the legal system urgently needs.

This critique has surface plausibility but is ultimately based on a false dichotomy. The choice is not between doctoral legal research and practical legal reform; it is between legal reform informed by systematic scholarly investigation and legal reform based on intuition, borrowed foreign models, and the interests of those who dominate reform processes. The evidence from countries that have developed strong legal scholarship traditions, including South Africa, whose post-apartheid legal reform was guided in part by a generation of legal scholars who had developed sophisticated analyses of the apartheid legal system and its alternatives, and India, whose constitutional court's development was significantly shaped by academic legal scholarship in the post-liberalization period, suggests that the development of legal scholarship is not a luxury that can be deferred indefinitely but a condition for the quality of legal reform.

The relevance critique is also based on a misunderstanding of what the SJD program proposes to do. The program is not designed to produce scholars who retreat into theoretical abstractions with no connection to Bangladesh's practical legal needs. It is designed to produce scholar-practitioners who combine intellectual sophistication with practical engagement, who investigate questions of genuine significance for the development of Bangladesh's legal system, and who communicate their findings in ways that reach not only academic audiences but also the practitioners, judges, legislators, and policymakers who can act on them. This is not the ivory tower model of legal scholarship against which the relevance critique is directed; it is precisely the applied, engaged, practically connected model of scholarship that the critique implies is missing.

Section 81.2: The Quality Critique

A different and in some respects more serious critique is the quality critique: the argument that Bangladesh's law schools do not have the faculty, the library resources, the research culture, or the institutional infrastructure to offer a doctoral program that meets international standards of

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quality, and that establishing a program under these conditions will produce degrees that are not genuinely equivalent to doctoral degrees from leading international institutions.

This critique is not entirely wrong, and it deserves honest engagement rather than defensive dismissal. Bangladesh's law schools do face genuine challenges of faculty quality, library resources, and research culture that must be addressed if a doctoral program is to be credible. The proposal in this Part to establish the SJD program as a joint program based in a dedicated Doctoral Research Center, rather than as the exclusive offering of any single law school, is designed precisely to address these challenges by pooling the best faculty across institutions, investing in shared library and research infrastructure, and building international connections that supplement the domestic resources of any individual institution.

The quality critique also underestimates the potential of well-designed international partnerships to support the development of doctoral programs in countries whose domestic research infrastructure is at an early stage. The Michigan SJD program's model of integrating international candidates into a community of graduate law students and Research Scholars, many of whom then return to their home countries to lead the development of legal scholarship there, demonstrates that international doctoral programs can function as capacity-building instruments for the legal academy in developing countries. The Bangladesh SJD program's international partnerships, its joint supervision arrangements with international scholars, its exchange program provisions, and its external examiner requirements are all designed to ensure that international quality standards are embedded in the program's assessment processes from the outset.

The honest answer to the quality critique is that the Bangladesh SJD program will face genuine quality challenges, particularly in its early years, and that addressing these challenges will require sustained commitment of resources, leadership, and institutional will. A program that cuts corners, that admits more candidates than it can supervise adequately, that does not maintain the independence of its assessment processes, or that allows political pressure to influence its decisions about quality, will fail to meet international standards and will deserve the quality critique that would be leveled against it. A program that maintains the institutional architecture proposed in this Part, with its rigorous admission processes, its structured supervisory framework, its progress monitoring, and its external examination requirements, has a genuine prospect of meeting international quality standards even in a challenging institutional environment.

Section 81.3: Political Resistance and the Management of Reform

The establishment of any new institution of the scale and ambition of the Bangladesh SJD program will face political resistance from multiple directions. Some resistance will come from existing institutions that perceive the new program as a competitor for resources, prestige, and talented students. Some will come from practitioners and professional organizations that are skeptical of the relevance of academic scholarship to legal practice. Some will come from government officials who question whether the investment in doctoral legal education is a priority relative to other claims on public resources. And some will come from within the legal academy itself, from scholars who feel threatened by the development of a more demanding and internationally competitive environment for legal research.

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The management of this political resistance is as important as the intellectual design of the program, and it requires a combination of strategic engagement and principled advocacy. The strategic engagement involves identifying the constituencies that have genuine interests in the development of legal scholarship, including reform-minded judges and senior practitioners, development agencies that fund rule of law programs, international law schools that are seeking partnership opportunities, and civil society organizations that understand the connection between legal scholarship and access to justice. Building a coalition of these constituencies in support of the program, before it is formally proposed and throughout the political process of its establishment, is essential for creating the political conditions in which the program can be established and sustained.

The principled advocacy involves making the case for doctoral legal education publicly and persuasively, in terms that speak to the varied concerns of the diverse audiences that must be persuaded. For judges and senior practitioners, the case should emphasize the connection between scholarly research and the quality of legal argument and judicial reasoning. For development agencies, the case should emphasize the connection between legal scholarship and the evidence base for legal reform. For government officials, the case should emphasize the economic and reputational benefits of developing Bangladesh as a center of legal scholarship and legal reform leadership in South Asia. And for the legal academy itself, the case should emphasize the professional benefits that come with the development of a research culture, including enhanced reputation, international connections, and the intellectual satisfaction of genuine scholarly engagement.

The Judicial Reform Commission that has been active in Bangladesh since 2024, the UNDP's July 2025 report on joining hands with Bangladesh for justice reform, and the broader momentum of institutional reconstruction that characterizes the post-2024 period in Bangladesh all provide a favorable political context for the establishment of the SJD program. The program should be presented as part of this broader reform agenda, not as a standalone academic initiative, so that it can benefit from the political support that the broader agenda commands.

CHAPTER EIGHTY-TWO: THE SJD IN THE BROADER ARCHITECTURE OF LEGAL EDUCATION REFORM

Section 82.1: The LLB, LLM, and SJD as an Integrated Pathway

The Bangladesh SJD program should not be designed as a standalone institution that operates independently of the rest of the legal education system. It should be the apex of an integrated pathway of legal education that runs from the reformed LLB through the specialist LLM programs proposed in Part Three to the doctoral program. This integration has both educational and institutional significance.

The educational significance of the integrated pathway is that each stage of the educational ladder should prepare students for the demands of the next stage, while also serving its own educational purposes for those who do not proceed further. The reformed LLB should develop

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the foundational analytical, research, and writing skills that are prerequisites for success in the LLM and ultimately in the SJD. The specialist LLM should develop the advanced specialist knowledge and the research methodology skills that are prerequisites for doctoral research in the relevant field. And the SJD should build on both of these foundations to develop the independent research capacity and original scholarly contribution that the doctoral degree certifies.

The institutional significance is that the three levels of the educational pathway must be coordinated in their design, their accreditation, and their resource allocation. A legal education system in which the LLB, LLM, and SJD programs are designed by different institutions following different principles, accredited by different bodies applying different standards, and funded from different sources with different conditions, will be fragmented and incoherent. The comprehensive legal education reform agenda proposed in this commentary, spanning Parts Three through Eight, must be understood as a single integrated proposal rather than a series of independent reforms, and it must be implemented in a coordinated way that ensures that each element reinforces and enables the others.

The relationship between the SJD and the specialist accreditation framework developed in Part Seven is a specific instance of this integration. The SJD graduate who pursues an academic career at a law school and who has conducted doctoral research in a specialty field has, through that research, developed a level of specialist expertise that exceeds that required for specialist accreditation. The framework proposed in Part Seven recognizes this by providing an expedited pathway to specialist accreditation for doctoral graduates, acknowledging the scholarly depth of the doctoral qualification as equivalent to the academic knowledge component of specialist accreditation. This recognition creates an additional incentive for practitioner-scholars to pursue doctoral education, since the doctoral qualification serves double duty as both an academic credential and a qualification for specialist accreditation.

Section 82.2: International Connectivity and Bangladesh's Position in the Global Legal Academy

The ultimate aspiration of the Bangladesh SJD program, beyond the development of individual scholars and the immediate benefit to Bangladeshi legal education and reform, is to establish Bangladesh as a recognized participant in the global legal academy. This aspiration may seem ambitious for a country whose legal scholarship tradition is at an early stage of development, but it is not unrealistic when viewed in the context of the trajectory of other developing countries' legal scholarship traditions over the past several decades.

South Africa is the most instructive example. In 1994, at the end of apartheid, South African legal scholarship was internationally marginalized, partly because of the international isolation of the apartheid era and partly because the legal academy had been deeply compromised by its engagement with the apartheid legal system. Within fifteen years, South Africa had produced a generation of constitutional scholars whose work on the post-apartheid constitutional order, on socio-economic rights, on transformative constitutionalism, and on the theory of legal transition was recognized as among the most important in the international legal academy. The Constitutional Court's judgments became required reading in comparative constitutional law courses around the world. South African legal scholars were appointed to leading positions in

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international organizations, were cited in judgments of courts in other countries, and were invited to lead international research projects. This transformation was achieved through a combination of deliberate investment in legal education reform, strong international partnerships, the development of institutional homes for legal research including the South African Institute for Advanced Constitutional, Public, Human Rights and International Law, and the intellectual seriousness of a scholarly community that was motivated by the urgency and significance of the legal questions it was addressing.

Bangladesh has many of the same assets that South Africa had in 1994: a legal system of genuine complexity and significance, constitutional questions of profound importance and international interest, a history that raises legal and jurisprudential questions that scholars around the world are increasingly interested in, and a tradition of legal thought that draws on multiple intellectual traditions in ways that enrich rather than merely complicate the analysis. What Bangladesh lacks, and what the SJD program is designed to supply, is the institutional infrastructure and the scholarly culture that can transform these raw materials into a recognized tradition of legal scholarship.

The Harvard Law School's Institute for Global Law and Policy, which welcomed participants from the Global South to its 2025 Global Scholars Academy and whose faculty included scholars from institutions as diverse as SciencesPo, SOAS, Melbourne Law School, and Stellenbosch University, represents the kind of international network that Bangladesh's legal scholars should aspire to participate in as contributors rather than merely recipients. The NYU Hauser Global Scholars program, which has selected scholars from forty-six countries over ten years, demonstrates the international legal academy's genuine interest in developing global legal scholarship capacity. Bangladesh's participation in these networks, as a country with important legal questions and serious scholars who are equipped to address them, is an achievable aspiration if the institutional development proposed in this Part is pursued with sustained commitment.

CHAPTER EIGHTY-THREE: JURISPRUDENTIAL REFLECTIONS ON SCHOLARSHIP AS PROFESSIONAL RESPONSIBILITY

Section 83.1: The Obligation of the Learned Profession

The legal profession has always claimed for itself the status of a learned profession, a designation that distinguishes law from mere trades or occupations by its foundation in a body of knowledge that requires sustained intellectual development and that is applied in service of important human interests. The claim to learned profession status has historically been used to justify the legal profession's extensive self-regulatory privileges, its high fees, and its social prestige. But if the claim is genuine rather than merely rhetorical, it carries obligations as well as privileges.

The most important obligation of a learned profession is the development and maintenance of the knowledge that is its foundation. A profession that claims to be learned but makes no systematic

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contribution to the development of the knowledge on which it is based is parasitic on the intellectual capital of the past, consuming without replenishing the scholarly heritage that gives its learning its content. In legal terms, this means that lawyers and legal institutions have an obligation to contribute to the development of legal knowledge through scholarship, not merely to apply the knowledge that others have developed. The SJD program is the primary institutional mechanism through which the Bangladeshi legal profession can discharge this obligation.

The Islamic concept of 'ilm, knowledge, which is one of the most highly valued goods in the Islamic ethical tradition, provides a powerful foundation for this argument in Bangladesh's cultural context. The Quran's repeated emphasis on the value of knowledge and the obligation to seek it, the prophetic tradition's injunction that the pursuit of knowledge is an obligation on every Muslim regardless of gender, and the great tradition of Islamic scholarship that produced the jurisprudential tradition on which this commentary has repeatedly drawn, all point toward an understanding of the development of knowledge as a religious and ethical obligation, not merely a professional interest. The legal scholar who investigates the law systematically, who develops genuine understanding of its principles and their justifications, and who communicates that understanding in ways that advance the quality of the legal system, is discharging an obligation that is both professional and, in the Islamic ethical framework, spiritual.

Section 83.2: The Scholar's Accountability

The scholar's obligation is not merely to produce knowledge but to produce it honestly, rigorously, and with appropriate accountability to the community of scholars and to the broader public. Legal scholarship that misrepresents the law, that ignores contrary evidence, that serves the interests of those who fund it at the expense of honest analysis, or that claims originality that the work does not possess, violates the fundamental norms of academic integrity that give scholarly claims their authority. These norms must be embedded in the culture and governance of the Bangladesh SJD program from its inception, not added as an afterthought when problems of academic misconduct arise.

The research ethics framework of the SJD program shall include explicit instruction in the norms of academic integrity, including the prohibition of plagiarism, fabrication, and falsification of evidence, the requirement of honest disclosure of conflicts of interest and funding sources, the obligation to represent the views of others accurately and to engage seriously with disagreement, and the duty of transparent disclosure of methodology and data in ways that allow the replication and critical assessment of research findings. These norms shall be part of the first-year curriculum's methodology seminar and shall be reinforced throughout the program through the supervisory relationship and the publication mentoring service.

The accountability of legal scholars to the public interest, as well as to their disciplinary peers, is a particularly important norm in the context of legal reform scholarship. Legal scholarship on matters of public importance, including constitutional reform, criminal justice, family law, and environmental protection, can influence significant policy decisions that affect large numbers of people. The scholar who produces research on these matters has a responsibility not merely to the academic norms of her or his discipline but to the public interest in the quality and honesty of the evidence and analysis that inform policy decisions. This responsibility does not require

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scholars to refrain from taking positions, or to pretend a neutrality they do not feel; it requires them to be honest about their normative commitments, to distinguish clearly between empirical findings and normative judgments, and to engage seriously with evidence and arguments that challenge their conclusions.

CONCLUDING SYNTHESIS OF PART EIGHT: THE DOCTORATE AS FOUNDATION OF LEGAL EXCELLENCE

The argument of Part Eight has moved from the philosophical foundations of doctoral legal education through the comparative experience of doctoral programs in other jurisdictions, to develop a comprehensive proposal for the Bangladesh Doctor of the Science of Law program: its institutional home, admission requirements, program structure, supervisory framework, funding architecture, research priorities, publication infrastructure, and relationship to the broader legal education and reform agenda.

The fundamental conviction that animates the entire proposal is that Bangladesh needs not only good lawyers but good legal scholars, and that the development of good legal scholarship requires the same kind of sustained institutional investment, the same rigor of standards, and the same commitment to genuine quality that the development of good lawyers requires. The SJD program is not a luxury; it is a necessity for a legal system that aspires to develop from the colonial inheritance it has received into a genuinely contemporary, genuinely sophisticated, and genuinely just legal order.

The scholar-practitioner ideal that has guided the design of the program throughout reflects a particular understanding of the relationship between legal knowledge and legal practice. Knowledge without practice is sterile; it produces sophisticated analysis of legal problems that no one is able to solve in the real world. Practice without knowledge is blind; it produces energetic engagement with legal problems that is not guided by understanding of their deeper structure or their connection to broader principles. The scholar-practitioner who combines both, who investigates the law with the rigour of a scholar and engages with it with the commitment of a practitioner, is the ideal that the Bangladesh SJD program aims to produce and that the Bangladeshi legal system, at this pivotal moment in its development, most urgently needs.

The development of Bangladesh as a center of legal scholarship in South Asia, as proposed in Section 82.2, is an ambitious aspiration, but it is grounded in the recognition of what Bangladesh actually possesses: a rich and complex legal heritage, a set of legal questions of profound significance, a tradition of legal thought that draws on multiple intellectual traditions, and a reform moment that creates both urgency and opportunity for the kind of intellectual leadership that legal scholarship can provide. The SJD program, established with the institutional rigor and the sustained commitment that it requires, is Bangladesh's contribution to the global conversation about law, justice, and the organization of human societies in the twenty-first century.

That conversation has, for too long, been conducted primarily by scholars from the Global North, applying frameworks developed in the Global North to problems that are partly universal and

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partly specific to the histories and contexts of particular societies. The development of strong legal scholarship traditions in Bangladesh and other countries of the Global South is not merely a matter of educational development; it is a matter of intellectual justice, a widening of the community of those whose voices are heard in the global conversation about law. Bangladesh's SJD graduates, if the program succeeds in its ambition, will be among those voices, contributing to international legal scholarship from the perspective of a society that has its own distinctive history, its own distinctive challenges, and its own distinctive wisdom about how law can serve or betray the people it is meant to govern.

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END OF PART EIGHT

Part Nine will address the reform of personal law in Bangladesh, covering: the historical development of Muslim personal law in Bengal from the Mughal period through colonial codification to the Muslim Family Laws Ordinance 1961; the jurisprudential controversies surrounding the Ordinance and its relationship to classical Islamic jurisprudence; the proposed reforms to the law of marriage, divorce, maintenance, custody, and inheritance under Islamic law; Hindu personal law and the arguments for statutory reform including the rights of Hindu women to property and to divorce; the personal law of other religious communities including Christians, Buddhists, and tribal communities; the interface between personal law and the constitutional guarantee of equality before law; the rights of women and children under the personal law system; the international human rights framework and its relationship to religious personal law; the comparative experience of Muslim-majority countries that have reformed personal law within an Islamic jurisprudential framework including Tunisia, Morocco, Indonesia, and Egypt; and the political economy of personal law reform in Bangladesh, including the role of religious authorities, women's organizations, political parties, and the constitutional court in shaping the reform agenda.

Part Ten will address transitional justice in Bangladesh, examining: the legacy of the Liberation War of 1971 and its ongoing significance for Bangladeshi legal and political culture; the International Crimes Tribunal Act 1973 and the establishment of the International Crimes

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Tribunal; the jurisprudence of the Tribunal and the controversies surrounding its proceedings, including international reactions to its procedural standards; the philosophical foundations of transitional justice including the debate between retributive and restorative approaches; the comparative experience of transitional justice mechanisms in South Africa, Rwanda, Cambodia, Argentina, and other countries; the ongoing challenges of truth, accountability, and reconciliation in Bangladesh's post-independence history; the legacy of political violence across multiple periods including the 1975 coup and its aftermath; and the institutional conditions required for transitional justice processes to achieve their stated goals of accountability and reconciliation.

Parts Eleven and Twelve will address respectively the comprehensive reform of the court system and procedural law, and the future of Bangladeshi law in the global legal order, bringing the twelve-part commentary to its conclusion.

PART NINE: PERSONAL LAW, RELIGION, AND THE CONSTITUTIONAL PROMISE OF EQUALITY IN BANGLADESH

PREFACE TO PART NINE

There is a peculiarity, at once philosophically fascinating and politically explosive, at the heart of Bangladesh's legal system. The Constitution of the People's Republic of Bangladesh, in its Articles 27, 28, and 31, makes solemn and unambiguous commitments to the equality of all citizens before the law, to non-discrimination on the grounds of religion, race, sex, or caste, and to equal rights for women and men in all spheres of state and public life. These are not decorative provisions. They are fundamental rights, enforceable before the courts, representing the constitutional vision of a society built on the premise that every citizen, regardless of the community into which she or he was born, enjoys the same fundamental legal status.

Yet this same Constitution, in its Article 41, guarantees the right of every citizen to profess, practise, and propagate religion. And the legal system that operates under this Constitution applies, in matters of personal status, inheritance, marriage, divorce, and family relations, not a single uniform law applicable to all citizens but a collection of distinct religious and customary legal regimes, each applicable to a different portion of the population. Muslim citizens are governed in these intimate and enormously important matters by a combination of classical Hanafi jurisprudence, colonial-era statutory modifications, and the Muslim Family Laws Ordinance of 1961. Hindu citizens are governed by the Dayabhaga school of Hindu law as modified by colonial legislation, a tradition that, as we shall see in considerable detail, discriminates against women in ways that are difficult to reconcile with the constitutional guarantee of equality. Christian citizens are governed by the Indian Divorce Act of 1869 and the Indian Christian Marriage Act of 1872, colonial-era statutes of Victorian vintage that in some respects remain less reformed than the law applied to other communities. Buddhist citizens operate without any formal statutory personal law at all, relying on customary practice and the general civil law. The indigenous communities of the Chittagong Hill Tracts live under customary laws that are recognised by statute but that vary between communities and that present their own complex challenges of gender justice and constitutional consistency.

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This is the landscape of personal law in Bangladesh: pluralistic, historically layered, constitutionally contested, and practically consequential for millions of people every day. It is a landscape shaped by the deepest forces in the intellectual and cultural history of the region, including the Mughal jurisprudential tradition, the Dayabhaga school's intellectual achievements, British colonial policy and its complex motivations, the Pakistani reform impulse that produced the 1961 Ordinance, and the post-independence political economy of a state that has repeatedly promised personal law reform and repeatedly found the political costs of delivery prohibitive.

Part Nine of this commentary addresses this landscape with the thoroughness it deserves. The analysis moves through the historical development of personal law in Bengal and Bangladesh, the jurisprudential foundations and controversies of each major system, the constitutional tensions that the plural personal law structure creates, the international human rights framework that Bangladesh has committed itself to observing, the comparative experience of countries that have navigated personal law reform within the constraints of religious identity, the specific reform proposals that the current political moment is generating, and the political economy that will determine whether reform is possible.

The intellectual stakes of this analysis are high. The question of personal law reform in Bangladesh is not merely a technical legal question. It is a question about the kind of country Bangladesh intends to be: whether it will make good on its constitutional promise of equality, whether it will find ways of reconciling the demands of religious tradition with the demands of human rights, and whether it will develop the institutional capacity and the political will to translate reform proposals into lived experience for the millions of women who currently bear the greatest costs of the system as it stands.

This Part is written with the conviction that reform is both possible and necessary. It is also written with the conviction that reform in this domain requires a quality of intellectual and political engagement that goes far beyond the mechanical application of international norms. The traditions at stake are living traditions, not historical relics. The communities they serve have legitimate interests in the perpetuation and adaptation of those traditions. The scholars and jurists who work within these traditions have produced sophisticated arguments about the relationship between divine command, human reasoning, and the demands of justice that cannot be dismissed as mere conservatism. Good reform in this area, reform that is durable, that commands genuine legitimacy, and that actually improves the lives of those it is designed to help, must engage seriously with these traditions rather than simply overriding them. That serious engagement is what this Part attempts.

CHAPTER EIGHTY-FOUR: THE HISTORICAL ARCHITECTURE OF PERSONAL LAW IN BENGAL

Section 84.1: The Pre-Colonial Plurality and Its Internal Logic

To understand why Bangladesh has the personal law system it has, one must begin not with the 1961 Ordinance, nor with the colonial codes, nor even with the Mughal administrative

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arrangements, but with the deeper intellectual logic of legal pluralism in pre-modern South Asia. As was established in Part One of this commentary, the pre-colonial legal universe of Bengal was characterised by a genuine and deep plurality of normative orders. What Part One treated relatively briefly must here be examined with the greater care that the specific context of personal law demands.

The concept of personal law, the idea that different communities within the same polity should be governed by different rules in matters of family relations and personal status, is not an invention of colonialism, though colonialism gave it a particular institutional form that has proved remarkably durable. In the pre-colonial period, the normative ordering of family life was understood, across all the major traditions present in Bengal, as a matter intimately connected to religious identity and communal belonging. The rules governing marriage, inheritance, and personal status derived their authority not from a secular state but from the divine sources of each tradition. A Hindu family governed its inheritance practices according to the Dayabhaga school of Dharmashastra not because a colonial administrator had classified them as Dayabhaga Hindus and applied the relevant textual rules, but because the Dayabhaga tradition was understood, within the framework of dharmic thought, as the proper ordering of family life for persons of their station and their regional inheritance.

The Hanafi rules of inheritance, talaq, mahr, and nikah that governed the Muslim families of Bengal similarly derived their authority not from state recognition but from their status as the revealed and juristically elaborated will of God. The great Hanafi scholars whose work shaped the tradition, Abu Hanifa himself, his students Muhammad al-Shaybani and Abu Yusuf, the later systematisers including al-Kasani and al-Marghinani, and the compilers of the Fatawa-e-Alamgiri, understood themselves as engaged in a project of discovering and elaborating the divine ordering of human life in its most intimate dimensions. The rules they produced were not experienced as external impositions on autonomous individuals; they were experienced as the God-given framework within which the good Muslim life was to be lived.

This point about the interior logic of pre-colonial personal law is not made to romanticise a past that was, for many people, particularly for women and for those of low social status, deeply unjust by any standard. It is made because understanding the interior logic of a tradition is the necessary precondition for understanding what is actually at stake when that tradition is subject to reform pressure. A reformer who treats the Hanafi rules of talaq as simply arbitrary exercises of male power, without understanding the theological framework within which those rules were developed and the alternative theological framework within which they can be reformed, is a reformer who will produce proposals that lack jurisprudential legitimacy and that will therefore fail to command the assent of the communities whose lives they are intended to improve. This is a lesson that the history of personal law reform in Bangladesh has taught repeatedly, at considerable cost.

The Mughal state's approach to personal law was sophisticated in ways that are often underappreciated. The Mughals did not attempt to impose a uniform personal law on all their subjects, an attempt that would have been both practically impossible and politically fatal. Instead, they created a tiered system in which Islamic law governed in the public sphere, particularly in criminal matters, commercial regulation, and state administration, while Hindu

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personal law continued to govern Hindu families in matters of inheritance, marriage, and family relations. The Qazis who administered justice in Mughal courts developed sophisticated practices for handling disputes that involved parties from different religious communities, drawing on both the principles of Islamic jurisprudence and the customs of the communities before them. The concept of qanun, the administrative regulations issued by the Mughal emperors, provided a layer of rule-making that could supplement and modify the application of classical Hanafi jurisprudence in ways that responded to the practical needs of governance.

This Mughal arrangement was not without its tensions and its injustices. The subordination of Hindu personal law to the oversight of a Muslim state created real vulnerabilities for Hindu communities. The application of Islamic criminal law, including the hudud punishments, to non-Muslim subjects was contested and inconsistently applied. The position of women under both Hanafi and Dayabhaga law left much to be desired from the perspective of what we would today call gender justice. But the system had an internal coherence and a degree of practical workability that reflected centuries of negotiation between the demands of governance and the realities of a pluralistic society.

Section 84.2: The Colonial Transformation and Its Paradoxes

The British transformation of this plural personal law system was one of the most far-reaching and paradoxical legal interventions in the history of any colonial system anywhere in the world. Its far-reaching character is evident: the British created, for the first time, a system of state-administered personal law in which the rules applicable to different religious communities were determined not by the communities themselves through their own internal processes of juristic reasoning, but by the colonial state through its processes of legislation, codification, and judicial decision. Its paradoxical character is equally evident: an empire that prided itself on bringing the rule of law to a people supposedly governed by arbitrary personal despotism created a system of personal law that was more systematically enforced, more rigidly codified, and in many ways more intrusive into the lives of individuals than the flexible, community-administered systems it replaced.

The key figure in understanding this transformation is Warren Hastings, whose 1772 Judicial Plan established the foundational principle of colonial personal law in Bengal. Hastings declared, with characteristic confidence, that in all suits regarding inheritance, marriage, caste, and other religious usages or institutions, the laws of the Quran with respect to the Muslims and those of the Shaster with respect to the Gentoos shall be invariably adhered to. This principle, that personal law should be determined by the religious community of the parties and administered by the colonial courts, was the founding moment of the personal law system that Bangladesh has inherited.

The apparent simplicity of Hastings's formula concealed layers of complexity that took generations to become fully apparent. The first and most fundamental problem was the question of what the laws of the Quran and the Shaster actually were. As Bernard Cohn and others have argued at length in the historiography of colonial law, the British did not simply apply pre-existing Hindu and Muslim law; they constructed versions of those laws through the processes of translation, codification, and judicial interpretation that were themselves shaped by British legal

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categories, British administrative needs, and British misunderstandings of the traditions they were attempting to administer. The pandits and maulvis who initially served as the courts' interpreters of Hindu and Muslim law were gradually displaced by English-educated judges applying English legal methods to translated texts, producing a hybrid body of law that was neither authentically traditional nor genuinely modernised.

The case of the mufassal courts' handling of Muslim law is illustrative. The Hanafi tradition that had governed Muslim personal life in Bengal was a living jurisprudential tradition, characterised by internal debate, regional variation, local custom (urf), and the kind of contextual judgment that the great jurists had always considered essential to the proper application of the divine law. When British courts began to administer this tradition, they transformed it in several critical ways. They privileged the written texts of the classical tradition over local custom and practice. They treated the fatwas of earlier scholars as binding precedents in the common law sense rather than as influential but revisable opinions in the juristic sense. They applied English rules of evidence and procedure to disputes that had previously been resolved through different evidentiary and procedural frameworks. The result was a petrified version of the Hanafi tradition that was, paradoxically, both more textually rigid and less jurisprudentially sophisticated than the tradition as it had actually been practised by trained Muslim jurists.

The point made here about rigidification and petrification is not merely a historiographical observation. It has profound practical consequences for contemporary reform. One of the persistent obstacles to personal law reform in Bangladesh is the argument, made by those who resist change, that the existing rules represent the authentic, classical Islamic tradition and that any modification would be a departure from divine law. This argument is itself a product of the colonial transformation of the tradition. The classical Hanafi jurists were not legal fossils; they were engaged in a dynamic, evolving jurisprudential conversation in which the application of divine principles to changing human circumstances was understood as a continuing responsibility of qualified scholars. The idea that the rules as codified by the colonial state represent a fixed and sacrosanct tradition is a colonial construction, not an authentic reflection of the classical jurisprudential ethos.

The Anglo-Muhammadan law that emerged from this process, a term that captures with some precision the hybrid character of what the colonial courts were actually applying, diverged in significant ways from classical Hanafi jurisprudence on several important issues. The courts' treatment of the option of puberty (khiyar al-bulugh), the enforceability of delegated divorce (talaq-i-tafwid), the rules of maintenance for divorced wives, and numerous other matters reflected the judges' attempts to translate Islamic principles into English legal categories, with results that were not always faithful to either tradition. The tension between the textual Hanafi position and the courts' practical decisions became a recurrent source of conflict that produced some of the most interesting and most consequential cases in the history of personal law adjudication in South Asia.

Section 84.3: The Muslim Family Laws Ordinance 1961 - Contexts, Contents, and Controversies

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The Muslim Family Laws Ordinance of 1961 represents the most significant legislative intervention in Muslim personal law since the colonial codification project, and it deserves detailed examination both for its substantive provisions and for the political and jurisprudential controversies it generated and continues to generate.

The immediate context of the Ordinance was the work of the Commission on Marriage and Family Laws, established by the Pakistani government in 1955 under the chairmanship of the jurist Abdul Rashid. The Commission's report, submitted in 1956, recommended a series of reforms to Muslim personal law that were designed to address the most significant gender inequities in the existing system. The Commission was composed of both religious scholars and secular reformers, and the deliberations it undertook and the report it produced reflected the deep tensions between different understandings of how Islamic law could and should be reformed. The dissenting note appended to the Commission's report by the religious scholar Maulana Ihteshamul Haq remains one of the most significant documents in the history of Islamic legal reform in South Asia, arguing with considerable force that the majority's recommendations violated the principles of classical Hanafi jurisprudence and represented an impermissible use of secular legislative authority to override divine law.

The Ordinance that was ultimately promulgated in 1961, under the military government of Field Marshal Ayub Khan, was less ambitious than the Commission's most radical recommendations but still represented a significant departure from the classical Hanafi rules as they had been applied by the courts. Its principal provisions addressed four areas: the registration of marriages, the restriction of polygamy, the procedure for divorce, and the inheritance rights of orphaned grandchildren.

The registration provisions of the Ordinance require every Muslim marriage to be registered with the local Union Council. The registration requirement is important not merely as a bureaucratic formality but as a mechanism for establishing the existence and terms of the marriage, including the amount and conditions of the mahr (dower), for purposes of later legal proceedings. In practice, the registration requirement has been imperfectly implemented, particularly in rural areas, and the consequences of non-registration have been inconsistently enforced. The gap between the formal legal requirement and the practical reality of marriage registration is itself an important datum for the sociology of law in Bangladesh, illustrating the persistent difficulty of translating formal legal rules into lived practice in contexts where informal norms, practical inconveniences, and cultural resistances conspire to undermine implementation.

The polygamy provisions of the Ordinance represent the most jurisprudentially contested element of its programme. Classical Hanafi law permits a Muslim man to contract up to four simultaneous marriages, subject to the condition, derived from the Quranic verse 4:3, that he treat his wives equitably. The Ordinance does not abolish polygamy but requires a husband who wishes to take an additional wife to obtain the permission of an Arbitration Council, which is composed of representatives of the husband and the existing wife or wives and is chaired by the Union Parishad chairman. If the Arbitration Council does not grant permission, the husband may still contract the additional marriage, but he is liable to criminal prosecution under the Ordinance and the additional marriage is not registered. Critically, the additional marriage remains valid under Islamic law even if contracted in violation of the Ordinance's procedural requirements,

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because the Ordinance cannot override the substantive rules of Islamic jurisprudence that determine the validity of a nikah contracted with the proper formalities.

This gap between the formal validity of the nikah and the criminal liability for contracting it in violation of the Ordinance's procedural requirements is a significant illustration of the tensions inherent in any attempt to use secular legislation to regulate matters governed by religious law. The legislature can impose procedural requirements and attach penal consequences to their violation, but it cannot, without directly challenging the authority of divine law, declare that a properly contracted nikah is void simply because a secular procedural requirement was not observed. The result is a situation in which women's practical protection against polygamy depends on the deterrent effect of criminal prosecution and the social pressure generated by the Arbitration Council process, both of which have proved inadequate in practice.

Recent scholarship published in 2025 examining polygamy laws in Bangladesh has highlighted the philosophical tension between the Quranic permissibility of polygamy and the restrictive provisions of the 1961 Ordinance, noting that the absence of structured marriage education exacerbates family instability and the psychological distress experienced by women and children in polygamous households. The same scholarship advances a reform model grounded in the Maqasid al-Shariah, arguing that harmonising legal regulation with the higher objectives of Islamic law requires attention to the systemic conditions that make polygamy harmful rather than simply restricting the practice through procedural mechanisms. Ittc This is precisely the kind of jurisprudentially grounded reform scholarship that this commentary has consistently argued Bangladesh needs more of, and it illustrates how the most productive contemporary legal scholarship in this area situates its reform proposals within the Islamic jurisprudential tradition rather than simply appealing to secular human rights norms.

The divorce provisions of the Ordinance address the procedure for talaq and for the dissolution of marriage at the wife's initiative. Under classical Hanafi law, a husband possesses the unilateral right of divorce by pronouncing the word talaq. The classical rules distinguish between different forms of talaq with different legal consequences: talaq al-ahsan, a single pronouncement revocable during the waiting period (idda); talaq al-hasan, three pronouncements in successive menstrual cycles; and talaq al-bida, the bid'ah or innovated triple pronouncement that the Prophet reportedly denounced but which the Hanafi school, controversially, treats as legally effective though sinful. The Ordinance requires the husband who pronounces talaq to give written notice to the chairman of the Union Council and to provide a copy to his wife within thirty days. The divorce then takes effect at the end of a ninety-day period from the date of notice, during which the Arbitration Council is supposed to attempt reconciliation. The Ordinance does not abolish the triple talaq, but by imposing a notice requirement and a reconciliation period, it significantly modifies its practical operation.

The notice requirement of Section 7 of the Ordinance has generated an extensive and important body of case law in the courts of Bangladesh. In the leading case of Mst. Bilquis Fatima v. Najmul Ikram Qureshi, decided by the Dhaka High Court in 1959 before the Ordinance came into force, the court grappled with the legal consequences of the triple talaq under the pre-Ordinance regime. The Ordinance's introduction of the notice requirement created a new set of questions: what happens if the husband pronounces triple talaq but fails to give notice? Is the

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talaq effective? Is the husband criminally liable? Can the wife treat herself as still married and claim maintenance? These questions have been answered differently in different cases, reflecting the inherent difficulty of applying a positivist statutory rule to a matter that is simultaneously governed by the substantive rules of the religious tradition.

The provision for the wife's right of divorce by khul, by which she may obtain a dissolution of marriage by returning her mahr to the husband, was recognised by the colonial courts as part of Anglo-Muhammadan law but was difficult to enforce in practice because it required the husband's agreement. The Dissolution of Muslim Marriages Act of 1939, still in force in Bangladesh, extended the grounds on which a Muslim woman could seek a judicial dissolution of marriage from the courts, including grounds of the husband's failure to maintain, the husband's cruelty, the husband's impotence, and other specified circumstances. The 1939 Act was itself the product of a reformist impulse within the Islamic legal tradition, drawing on the Maliki school's more liberal rules on judicial dissolution as a model for supplementing the more restrictive Hanafi rules.

The inheritance provisions of the Ordinance address what had been, before its enactment, a particularly harsh application of the classical Hanafi rules of inheritance to orphaned grandchildren. Under the classical Hanafi rules, the children of a deceased son who predeceases his father do not inherit from their grandfather if there are surviving sons of the grandfather; the surviving sons exclude their deceased brother's children because, in the language of the law, those children are related to the grandfather through a person (the deceased son) who himself would have been an heir. This exclusion, which strikes many people as morally harsh, had been recognised and applied by the courts in a number of cases before the Ordinance. The Ordinance reformed this rule by providing that the orphaned grandchildren of a person who dies intestate shall be entitled to a share in the estate equal to the share that would have gone to their deceased parent. This reform, which resembles the per stirpes distribution that common law jurisdictions apply in analogous circumstances, was justified by the Law Commission on the ground that it was supported by the opinion of some classical jurists, particularly in the Shia tradition, and that it served the clear purposes of Islamic inheritance law, which include providing for the dependent members of the deceased's family.

The reception of the 1961 Ordinance by the religious scholarly community in what was then East Pakistan was deeply hostile, and the terms of that hostility are illuminating for understanding the politics of personal law reform in Bangladesh today. The opposition came from multiple directions. Traditionalist scholars argued that the Ordinance represented an impermissible legislative intrusion into matters of divine law, that the requirement of state permission for polygamy was a restriction on a right that God had explicitly granted, and that the modification of the talaq procedure was an innovation that had no basis in classical jurisprudence. Modernist critics from a different direction argued that the Ordinance did not go far enough, that the Arbitration Council procedure for polygamy was ineffective, that the notice requirement for talaq left women insufficiently protected, and that the failure to address the fundamental inequality of the classical inheritance rules left the most significant source of women's economic subordination untouched.

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The political conditions under which the Ordinance was promulgated, under a military government that had suspended representative politics and was pushing through a modernising agenda without the necessity of parliamentary debate, profoundly shaped both the content of the reform and its reception. The argument that the Ordinance was illegitimate because it was promulgated by a military dictator rather than by an elected legislature is a recurring element of the conservative critique. This argument has a certain democratic resonance, but it also proves too much: if only democratically enacted legislation can reform personal law, and if the political conditions of parliamentary democracy make such legislation virtually impossible to enact because of the religious lobby's power, then personal law becomes effectively unreformable in perpetuity. This is itself a problem of democratic theory, one that goes to the heart of the political economy of reform in Muslim-majority democracies.

CHAPTER EIGHTY-FIVE: JURISPRUDENTIAL FOUNDATIONS AND CONTROVERSIES IN MUSLIM PERSONAL LAW

Section 85.1: The Methodological Framework of Islamic Legal Reform

The jurisprudential question that underlies all debates about Muslim personal law reform is both precise and profound: by what methods and on what grounds is it permissible to modify the rules that classical Islamic jurisprudence has established for the governance of marriage, divorce, and inheritance? This question is not merely academic; the answer one gives to it determines the entire range of reforms that can be proposed with any claim to Islamic legitimacy, and the claim to Islamic legitimacy is, in the political context of Bangladesh, an essential condition of practical effectiveness.

The classical Islamic jurisprudential tradition recognised four main sources of law: the Quran, the Sunnah, ijma (consensus), and qiyas (analogical reasoning). Beyond these four sources, different schools and scholars recognised additional methodological tools including istihsan (juristic preference), maslaha mursala (unrestricted public interest), urf (custom), sadd al-dhara'i (the blocking of means to harm), and others. The scope of each of these tools and the conditions under which it could be employed were matters of extensive juristic debate, and the debates were never finally resolved within the tradition. This irresolution is not a weakness of the tradition; it reflects the inherent complexity of the enterprise of deriving human rules from divine guidance.

The most significant development in Islamic legal thought for the purposes of personal law reform is the maqasid al-shariah framework, briefly introduced in Part One of this commentary and now requiring much more detailed examination. Al-Shatibi's elaboration of the higher objectives of Islamic law, building on earlier formulations by al-Ghazali and al-Juwayni, provided a framework for evaluating specific legal rules not merely by their derivation from the textual sources but by their contribution to the overarching purposes that Islamic law is designed to serve. The five essential objectives (hifz al-din, hifz al-nafs, hifz al-aql, hifz al-nasl, and hifz al-mal), and the subsidiary objectives that different scholars have added to the list, provide criteria for evaluating whether specific applications of legal rules actually serve the purposes of

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Islamic law or whether they have been distorted by cultural accretion, misinterpretation, or the historical contingency of their original social context.

The reform potential of the maqasid framework is considerable, and it has been extensively developed by contemporary scholars. Jasser Auda, whose 2008 work Maqasid al-Shariah as Philosophy of Islamic Law represents the most systematic recent treatment of the framework, has argued that a systems approach to the maqasid can provide a methodology for legal reform that is simultaneously anchored in the Islamic tradition and responsive to the demands of contemporary justice. Auda's argument is that the classical articulation of the maqasid as five specific objectives is itself a product of historical juristic reasoning rather than a definitive statement of divine intention, and that a more sophisticated understanding of the tradition's purposes would include the protection of human dignity, justice, and equality as objectives of equal or greater importance than the classical five. This argument has been controversial within the Islamic scholarly community, but it represents a serious and sustained jurisprudential engagement with the reform question that cannot be dismissed as mere secularism in Islamic dress.

The Moroccan philosopher and theologian Mohammed Abed al-Jabri, whose critical analysis of the Arab-Islamic intellectual heritage published in the 1980s and 1990s has had enormous influence on contemporary Islamic thought, approached the reform question from a somewhat different direction. Al-Jabri argued that the dominance of the Bayani (textual) epistemology in classical Islamic thought, which privileges derivation from revealed texts through methodological rules, has prevented the tradition from adequately integrating the Burhani (demonstrative, rational) and Irfani (Gnostic, experiential) epistemological modes that the full range of Islamic intellectual heritage makes available. On al-Jabri's analysis, the opening of Islamic jurisprudence to a broader range of epistemological resources, including rational demonstration and empirical social knowledge, is not a departure from the tradition but a recovery of dimensions of the tradition that the dominance of the textual mode has suppressed.

For the specific purposes of personal law reform in Bangladesh, the most directly relevant debates within contemporary Islamic jurisprudence concern three issues: the permissibility of restricting polygamy or requiring state approval for it, the permissibility of modifying the talaq procedure to provide women with greater protection, and the permissibility of reforming the inheritance rules to provide greater equity between male and female heirs.

On polygamy, the jurisprudential debate turns on the interpretation of the Quranic verse 4:3, which permits up to four marriages but conditions the permission on the ability to treat wives equitably, and verse 4:129, which states that a man will never be able to deal equitably between wives even if he desires to do so. The classical Hanafi position treats verse 4:3 as permitting polygamy subject to a subjective requirement of intended equitable treatment, while verse 4:129 is understood as a statement about human limitations rather than a prohibition. The reformist argument, associated with scholars like Shaikh Muhammad Abduh in Egypt and later reformers, treats the combination of these two verses as effectively prohibiting polygamy on the ground that the condition of equitable treatment can never in practice be met. This reformist reading has been adopted as the basis of legislation in Tunisia, where polygamy was abolished in 1956, and it has influenced the more restrictive regulations in Morocco, Egypt, and other jurisdictions. The debate is sophisticated on both sides, and the outcome depends on methodological choices about

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the scope of legislative authority, the role of social context in interpretation, and the weight to be given to different principles of Islamic jurisprudence.

On talaq, the jurisprudential debate is equally sophisticated. The classical Hanafi position that triple talaq pronounced in a single sitting is immediately effective and irrevocable, though sinful, was itself contested within the tradition: some classical scholars, including Ibn Taymiyya and his student Ibn al-Qayyim, argued that triple talaq in a single sitting should be treated as a single revocable pronouncement, on the ground that the Prophet himself had treated it as such. The Maliki school has a different set of rules on talaq, and the Shia traditions diverge even more significantly from the Hanafi position. There is therefore substantial internal Islamic jurisprudential support for the position that the Ordinance's modification of the talaq procedure, while going beyond the classical Hanafi rules as applied by the colonial courts, does not violate the core principles of Islamic jurisprudence but rather reflects a legitimate choice between different positions available within the tradition.

On inheritance, the reformist argument is more difficult. The Quranic rules of inheritance (al-faraid) set out in verses 4:11, 4:12, and 4:176 are among the most detailed and apparently specific legal provisions in the Quran, and the classical jurists treated them as a direct divine legislation of inheritance shares that could not be modified by human authority. The rule that a female heir receives half the share of a male heir of the same degree, which the Quran explicitly prescribes, is understood in the classical tradition as a divinely mandated provision that reflects the different financial obligations imposed on men and women by Islamic law, specifically the obligation of the husband to maintain his wife and the absence of any corresponding financial obligation on the wife. The reformist counter-argument, developed by scholars like Fazlur Rahman and Tariq Ramadan, takes two main forms: first, that the social conditions that justified the differential shares, namely the husband's exclusive financial obligation, no longer obtain in contemporary societies where women bear substantial financial responsibilities; and second, that the higher objectives of Islamic law, particularly the objective of justice (adl) and the protection of dependants (hifz al-nasl), are better served by inheritance rules that reflect contemporary social realities than by the mechanical application of historical rules in changed circumstances.

The methodological difficulty with both forms of the reformist inheritance argument is that they require either a claim that the Quran's apparently explicit prescription can be overridden by consequentialist reasoning about its purposes, or a claim that the social conditions on which the prescription's justification depends have changed sufficiently to trigger a different rule. Both claims are contestable within the Islamic jurisprudential tradition, and the contestation is genuine rather than merely political. This is why inheritance reform has proved the hardest nut to crack in the Muslim-majority world, resisted even in countries like Tunisia that have made considerable progress on other aspects of personal law reform. Bangladesh's Women's Reform Commission, as discussed later in this chapter, has made proposals on inheritance that are politically explosive precisely because they engage with this deepest layer of the jurisprudential difficulty.

Section 85.2: The Judicial Treatment of Muslim Personal Law in Bangladesh

The courts of Bangladesh have played an important and complex role in the development of Muslim personal law, both through their interpretation of the statutory framework established by

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the Ordinance and through their engagement with the underlying principles of the Hanafi tradition. The case law that has accumulated over the decades since independence represents a significant body of jurisprudence that has, in some respects, been more progressive than the static statutory framework and, in others, has reinforced the limitations that the classical tradition imposes on women's legal position.

The most significant and most controversial case in the history of Muslim personal law adjudication in Bangladesh is Muhammad Hefzur Rahman v. Shamsun Nahar Begum, whose complex procedural history illustrates the tensions within the judicial treatment of the tradition. The High Court Division, in its 1995 judgment, held that a Muslim husband's obligation to maintain his divorced wife did not cease at the expiry of the idda period but continued until she remarried or her circumstances changed. The ruling was based on an interpretation of a Quranic verse relating to provisions for divorced wives (2:241), and the court held that a former husband is bound to provide maintenance on a reasonable scale for an indefinite period until the divorced wife's status changes. The Supreme Court overturned this judgment on appeal in December 1998, leaving the classical Hanafi interpretation intact. Lawyers & Jurists The swing of judicial opinion between the High Court's progressive reading and the Appellate Division's conservative reversal illustrates the contested character of the tradition's application and the extent to which outcome depends on the methodological approach adopted by the individual judge.

The case of Nelly Zaman v. Giasuddin Khan, decided in 1982, provides another illustration of the courts' complex engagement with Muslim personal law. The court ruled that with the passage of time, the husband's suing for forcible restitution of conjugal rights against an unwilling wife was both outmoded and untenable if considered in relation to the principle of equality of men and women enshrined in Articles 27 and 31 of the Constitution. The court observed that in the husband's unilateral plea for restitution there is no mutuality and reciprocity between the respective rights of husband and wife, since such a plea is not available to a wife against her husband apart from claiming maintenance and alimony. Lawyers & Jurists This reasoning, which reads constitutional equality principles into the interpretation of personal law, represents a methodology of constitutional harmonisation that has important potential for progressive reform but has not been consistently applied across the range of personal law issues.

The treatment of mahr (dower) by the Bangladeshi courts illustrates another dimension of the judicial development of Muslim personal law. Mahr is the amount specified in the marriage contract as due to the wife from the husband, and it is a distinctive feature of Islamic law that has no precise equivalent in common law. The courts have generally upheld the wife's right to mahr as an enforceable contractual obligation, treating it for procedural purposes within the framework of the general civil law of contract, but questions about the nature of mahr, whether it is a condition of the marriage contract or an obligation arising from it, whether it can be varied by subsequent agreement, and what the consequences of non-payment are, have generated a complex body of case law that reflects both the sophistication of the underlying jurisprudential tradition and the difficulty of translating its concepts into common law procedural categories.

The delegated divorce (talaq-i-tafwid) deserves particular attention as an example of how a mechanism available within the classical Hanafi tradition can be used by women to secure significant protections that the tradition's default rules do not provide. The delegation of divorce

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allows the husband to confer on the wife, at the time of the marriage contract, the right to pronounce talaq on his behalf in specified circumstances. When properly incorporated into the kabinnama (the written marriage contract), the delegation of divorce gives the wife an enforceable right to terminate the marriage without going to court, subject only to the conditions specified in the delegation clause. The widespread advocacy by women's rights organisations in Bangladesh for the inclusion of robust tafwid clauses in the standard kabinnama represents a strategy of working within the existing jurisprudential framework to achieve outcomes that the framework's default rules deny. The practical effectiveness of this strategy depends on women's awareness of their right to include such clauses, the willingness of registrars and community leaders to support their inclusion, and the courts' enforcement of delegation clauses once included.

Section 85.3: Khul and the Judicial Dissolution of Marriage

The Muslim woman's right to judicial dissolution of marriage through the mechanism of khul, and the related statutory right under the Dissolution of Muslim Marriages Act 1939, represent one of the most practically important areas of Muslim personal law for the women of Bangladesh. Khul, in classical Hanafi jurisprudence, is a dissolution of marriage initiated by the wife in which she returns her mahr to the husband in exchange for his agreement to release her from the marriage. The requirement of the husband's agreement meant that in the classical system, a wife who wished to dissolve an unhappy marriage was dependent on her husband's cooperation, which could not always be counted upon.

The 1939 Act extended the grounds on which a Muslim woman could obtain a judicial dissolution of marriage without the husband's consent to include a range of circumstances, most notably the husband's failure to maintain her, cruelty, desertion, and incapacity. The Act was drafted drawing on the Maliki school's more liberal rules on judicial dissolution, applying a methodology of choosing between different positions available within the broad Islamic jurisprudential tradition, a methodology known as takhayyur or eclecticism. This methodological approach, pioneered in South Asia by the scholar Iqbal and the lawyers and scholars who prepared the 1939 Act, remains available as a tool for further reform, allowing the legislature to draw on the most justice-promoting positions available within the full range of Islamic jurisprudential schools rather than being confined to the particular positions of the Hanafi school.

The procedural functioning of the judicial dissolution mechanism in Bangladesh has been significantly improved by the Family Courts Ordinance of 1985, which established a specialised family court structure with simplified procedures designed to make family justice more accessible, particularly to women. The Family Courts Ordinance 1985 provides an effective forum for all communities to seek legal redress in disputes relating to dissolution of marriage, dower, maintenance, restitution of conjugal rights, and guardianship of children, though in practice most family disputes in Bangladesh are settled through informal mechanisms rather than the formal courts. Blast The gap between the formal statutory framework and the practical reality of dispute resolution remains one of the most significant challenges for the effective implementation of women's legal rights in Bangladesh.

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CHAPTER EIGHTY-SIX: HINDU PERSONAL LAW IN BANGLADESH - JURISPRUDENCE, INJUSTICE, AND THE POLITICS OF REFORM

Section 86.1: The Dayabhaga School and Its Contemporary Significance

The Hindu personal law applicable in Bangladesh is based on the Dayabhaga school of jurisprudence, a school of legal thought that originated in Bengal and that represents one of the most significant regional variations in the Hindu jurisprudential tradition. The Dayabhaga was composed by Jimutavahana, a jurist who lived in Bengal probably in the eleventh or twelfth century of the Common Era, and it differs from the Mitakshara school, which prevails in the rest of India, in several fundamental respects that have enormous practical consequences for the distribution of property within Hindu families.

The philosophical foundations of the Dayabhaga are rooted in the concept of pinda, the ritual offering of rice balls to ancestors, as the basis for determining relationships of inheritance. Jimutavahana argued, against the Mitakshara position, that the right of inheritance does not arise at birth but only upon the death of the ancestor, and that it is determined by the degree of spiritual relationship to the deceased rather than by the fact of physical birth into the joint family. This foundational difference in the theory of inheritance has far-reaching practical consequences. Under the Mitakshara system, a son acquires by birth an undivided share in the joint family property, which means that the father's right to dispose of the property is limited by the son's pre-existing interest. Under the Dayabhaga system, the son has no interest in the joint family property until the father's death, which means the father has much greater freedom of testation during his lifetime.

For the purposes of gender justice, however, the most significant feature of the Dayabhaga system is not this difference from the Mitakshara but rather the position it assigns to women in the scheme of inheritance. Under the Dayabhaga rules as applied in Bangladesh, daughters generally do not inherit from their father's estate in the presence of sons, and women who do inherit typically acquire only a limited or life estate rather than the full ownership that male heirs receive. The widow inherits a qualified interest in her husband's property that she holds as long as she remains a widow, but which she cannot alienate and which passes to the husband's heirs on her death. The doctrine of stridhan, which encompasses property that a woman acquires through gift, inheritance from her own mother, and certain other specified sources, provides her with full ownership rights in a limited category of assets, but this category does not include the bulk of family property.

The discriminatory character of these rules when evaluated against the constitutional standard of equality between men and women is apparent. The Appellate Division judgment in Shishubar Dhali and Others vs. Chitta Ranjan Mondol and Others marks a critical moment in the harmonisation of Hindu personal laws with constitutional principles in Bangladesh, reaffirming the constitutional mandate of gender equality and addressing the historical oppression faced by women under patriarchal interpretations of personal laws. The case centred on the inheritance rights of a daughter's daughter under the Dayabhaga school, where the court, rooted in Jimutavahana's Dayabhaga itself, held that daughters and sons inherit their mother's stridhan equally and absolutely. Lawyersclubbangladesh This judgment represents an important step in

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the constitutional harmonisation of Hindu personal law, but it addressed only the specific question of stridhan inheritance and did not touch the more fundamental question of daughters' rights to their father's general property.

The broader question of legislative reform is one that has been persistently raised by Hindu women's organisations, legal scholars, and women's rights advocates in Bangladesh over many decades, and that has been persistently frustrated by political obstacles. The Law Commission recommended amendments to the Hindu Inheritance Act to provide Hindu women in Bangladesh equal rights to their father's property, and in 2012 proposed a new law containing nine provisions emphasising equal property rights for women. However, the government was unable to take any further action due to the resistance of some Hindu scholars. The Daily Star The parallel with the Hindu Succession Act amendments in India is instructive: India reformed its Hindu succession law in 1956 and strengthened those reforms in 2005, while Bangladesh, despite being under the same colonial legal inheritance, has not enacted similar reforms in more than seven decades of independence.

Section 86.2: The Absence of Divorce in Classical Hindu Law and Its Consequences

Perhaps the most striking deficiency of Hindu personal law as applied in Bangladesh, from the perspective of gender justice and practical human welfare, is the absence of any provision for the dissolution of marriage by divorce. Classical Hindu law understands marriage as a sacred and indissoluble sacrament, a spiritual union that cannot be dissolved by human authority. The Hindu Marriage Act of 1955 in India introduced divorce for the first time into the Hindu personal law of that country, and the Hindu Marriage Act of 1976 later extended the grounds for divorce and simplified the procedure. In Bangladesh, however, no equivalent statutory reform has been enacted, leaving the classical position, of marriage as an indissoluble union, technically in force for the Hindu population.

The practical consequences of this position are deeply damaging. In the absence of a divorce provision in Hindu law, Hindu people are making illegal separation deeds for their own needs, administering illegal marriages, and giving birth to children whose legal status is uncertain. The reform of Hindu law is needed to legalise these practical arrangements that communities have already developed to manage the reality of marital breakdown. New Age This observation goes to the heart of a persistent problem in the sociology of law: when formal legal rules are so far out of step with the actual practices and needs of the community they purport to govern, the community develops informal workarounds that have no legal standing but that represent the de facto legal order in which people actually live. The informal separation deeds and second marriages that Hindu families in Bangladesh have developed to manage marital breakdown are not a reflection of impiety or lawlessness but of the rational adaptation of communities to the failure of the formal legal system to serve their actual needs.

The position of Hindu women in the context of marital breakdown is particularly precarious. A Hindu woman whose marriage has broken down and who is living apart from her husband has no enforceable right to maintenance under the classical Hindu law of Bangladesh (beyond limited provisions under the specific relief jurisdiction), no right to a share of the marital assets she may have helped to accumulate, and no formal legal status for any subsequent relationship she may

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enter into. She cannot remarry in a way that will be recognised by law, which means that any children of a subsequent union will have an uncertain legal status in matters of inheritance and other personal law questions. The Hindu Widows Remarriage Act of 1856, which permitted widows to remarry, was an important reform in its time but it addresses only one aspect of a much broader problem. The widow who remarries under the 1856 Act loses her right to her deceased husband's property under Section 2 of that Act, which means that the right to remarry comes at the cost of economic vulnerability.

The Hindu Marriage Registration Act of 2012 in Bangladesh introduced an optional framework for the formal registration of Hindu marriages, aiming to protect marital rights, enhance gender equality, and reduce legal ambiguities. However, for many Hindus in Bangladesh, marriage is viewed as a sacred religious institution rather than a legal contract, and there is significant scepticism about the need for state involvement in documenting a practice traditionally governed by religious customs and rituals. Saudijournals The optional character of the registration scheme, as opposed to the mandatory registration required for Muslim marriages, reflects the political sensitivity of any intervention in Hindu personal law and represents a compromise that satisfies neither the reformers, who want mandatory registration with accompanying protections, nor the traditionalists, who resist state involvement in the religious institution of marriage altogether.

The comparison with India's trajectory of Hindu law reform is instructive and somewhat sobering. India's Hindu Code Bills of the 1950s, which enacted the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, and the Hindu Adoptions and Maintenance Act, were among the most ambitious legislative reforms in the history of independent India and were pushed through by Prime Minister Nehru against sustained opposition from religious conservatives and some members of his own party. The political conditions that made this reform possible in India in the 1950s, a secular nationalist government with a large parliamentary majority and a Prime Minister personally committed to gender equality, have not been present in Bangladesh at any time during its independent history. The Hindu community in Bangladesh, as a religious minority that has faced significant communal tensions at various points in the country's history, has additional reasons to be cautious about provoking the religious sensitivities of the majority community through personal law reform, reasons that the Hindu majority in India did not face in the same way.

Section 86.3: Property Rights, Economic Dependency, and the Development Agenda

The connection between Hindu women's property rights and broader development goals deserves particular emphasis in any analysis of the reform agenda. Land and property ownership is not merely a matter of economic value; it is a fundamental determinant of social status, political voice, physical security, and access to credit and other economic resources. A woman who does not own property in her own name is more economically vulnerable to domestic violence, more dependent on male relatives for basic security, and less able to participate as an equal in economic and social life.

Hindu personal law grants no inheritance rights to daughters, and this systemic deprivation undermines not only women's rights but the entire nation's capacity for climate resilience and sustainable development. In a country like Bangladesh on the frontlines of climate disaster, land

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is not just wealth but resilience. Women, especially in rural areas, are central to agricultural labour, food systems, and adaptation strategies, but if they are excluded from owning or making decisions about land, they are also excluded from shaping the climate response. The Business Standard This argument, situating women's property rights within the framework of Bangladesh's environmental and development challenges, represents an important and underutilised line of argument for reform that goes beyond the purely legal and jurisprudential dimensions of the question.

The research evidence on the relationship between women's property rights and development outcomes is substantial. Studies from Bangladesh itself, as well as from comparable contexts in South Asia and elsewhere, demonstrate that women who control property are more likely to have their children vaccinated and educated, less likely to suffer domestic violence, and more likely to invest in the productive assets of the household. The argument for reform of Hindu personal law in Bangladesh is therefore not merely a matter of compliance with constitutional equality provisions, important as that is, but also a matter of practical development policy. Bangladesh's commitment to the Sustainable Development Goals, including SDG5 on gender equality and SDG10 on reduced inequalities, creates international obligations that reinforce the constitutional obligations to reform a personal law system that systematically denies property rights to women.

Analysing the International Convention of Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Discrimination against Women to which Bangladesh is a party allows for the conclusion that personal law governing women's inheritance rights in Bangladesh does not comply with the state's international human rights obligations. CEDAW has advised Bangladesh to develop a clear legislative framework to safeguard rural women's rights to inheritance and land ownership. ResearchGate The persistence of discriminatory inheritance rules in both Muslim and Hindu personal law despite these international obligations represents a significant accountability gap that the current reform moment, discussed below, may or may not be capable of addressing.

CHAPTER EIGHTY-SEVEN: PERSONAL LAW OF OTHER COMMUNITIES - CHRISTIAN, BUDDHIST, AND INDIGENOUS

Section 87.1: Christian Personal Law and the Colonial Inheritance

The personal law applicable to the Christian community in Bangladesh is a subject that receives relatively little attention in legal scholarship, partly because Christians constitute a small proportion of the population (approximately 0.3 percent) and partly because the colonial-era statutes that govern their personal affairs have not generated the same volume of litigation and controversy as the Muslim and Hindu systems. But the condition of Christian personal law in Bangladesh is in some respects the most obviously anachronistic of all the personal law systems, representing a largely unmodified Victorian inheritance that has become increasingly out of step with both the social practices of Bangladeshi Christians and the norms of international human rights law.

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The Indian Christian Marriage Act of 1872 governs the solemnisation of Christian marriages in Bangladesh. The Act provides for a relatively elaborate system of marriage solemnisation by ministers of religion, marriage registrars, and superintendents of Christian missions, and it imposes requirements of notice, consent, and registration that are broadly consistent with a modern understanding of marriage as a legal institution. The Act does not, however, address the substantive conditions of marriage, the rights and obligations of the parties during marriage, or the consequences of marital breakdown.

The Indian Divorce Act of 1869, which remains in force in Bangladesh as the primary legislation governing the dissolution of Christian marriages, is a statute that reflects the social attitudes and legal philosophy of Victorian England in ways that are now manifestly inappropriate. The Act requires Christian couples who wish to divorce to petition the relevant court, and it provides grounds for divorce that are more restricted than those available to other communities under their respective personal laws. The historical reason for the restriction was the Church of England's theological opposition to divorce, which had shaped the English law on which the Indian Act was modelled. The relevance of Church of England theology to the personal law of Bangladeshi Christians, the majority of whom are Roman Catholic or members of indigenous Protestant denominations with their own distinctive traditions, is not obvious.

The disparity between the grounds for divorce available to Christian women and those available to Muslim women under the Dissolution of Muslim Marriages Act 1939 is particularly striking. A Muslim woman can obtain a judicial dissolution of marriage on a range of grounds including the husband's failure to maintain, cruelty, and desertion. The comparable provisions for Christian women under the 1869 Act are more restricted and more procedurally complex. This inequality between religious communities in the availability of the same basic right, the right to dissolve a marriage that has irrevocably broken down, is difficult to justify on any principled basis and represents one of the most straightforward reform candidates in the entire personal law system.

The experience of Christian personal law reform in India provides a useful comparative reference. India reformed the Indian Divorce Act in 2001, introducing no-fault divorce on the ground of irretrievable breakdown after a two-year period of separation, equalising the grounds for divorce between husbands and wives, and simplifying the procedural requirements. Bangladesh has not enacted equivalent reforms, leaving the Christian community under a statute that is more than 150 years old and that in key respects provides less protection for Christian women than is available to women of other communities.

Section 87.2: Buddhist Personal Law and the Vacuum of Formal Regulation

The Buddhist community of Bangladesh, concentrated primarily in the Chittagong Hill Tracts and in Chittagong district, faces a personal law situation that is in some respects more challenging than any other community's. There is no formal statute governing Buddhist personal law in Bangladesh. Buddhist marriage, divorce, and inheritance are governed by customary practice, which varies between different Buddhist communities and which has not been subjected to the systematic codification or judicial elaboration that has produced the relatively well-developed (if deeply imperfect) systems applicable to Muslims and Hindus.

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The absence of a formal legal framework creates practical difficulties for Buddhist families in several situations. Questions about the validity of marriages, the rights of parties on divorce or separation, the inheritance rights of widows and daughters, and the guardianship of children in the event of parental dispute all have to be resolved in the absence of a clear statutory framework. Courts confronted with such questions must either apply general civil law principles, which may not be well adapted to the specifics of Buddhist family life, or attempt to identify and apply the relevant customary norms, which requires the court to make findings of fact about practices that may vary between communities and that may not be well documented.

The intersection of Buddhist personal law with the indigenous customary law of the Chittagong Hill Tracts communities, discussed in the following section, adds an additional layer of complexity. Many of the Buddhist communities in the Hill Tracts are also indigenous communities whose way of life is governed by a complex system of customary law that encompasses not only personal law matters but land rights, community governance, and the resolution of disputes about resources and obligations. The relationship between this customary law system and the formal personal law applicable to other communities is a matter of ongoing legal uncertainty that has practical consequences for the people who live within it.

The reform agenda for Buddhist personal law would need to address the basic question of codification: whether to enact a statute specifically governing Buddhist personal law, modelled perhaps on the Islamic or Hindu systems, or to extend the Family Courts Ordinance's jurisdiction and the general civil law's applicability to fill the vacuum left by the absence of formal Buddhist personal law. The first approach would require engagement with the diversity of Buddhist communities and their practices, and might produce a codified Buddhist law that misrepresents the actual diversity of practice in the same way that the colonial codification of Hindu and Muslim law misrepresented those traditions. The second approach would risk applying general civil law principles that are not sensitive to the specific values and practices of Buddhist communities. The resolution of this dilemma would require genuine consultation with Buddhist community representatives and scholars, of a kind that the reform process has not yet undertaken.

Section 87.3: Indigenous Customary Law in the Chittagong Hill Tracts

The Chittagong Hill Tracts present the most complex and most politically sensitive instance of legal pluralism in Bangladesh. The indigenous communities of the Hill Tracts, which include the Chakma, Marma, Tripura, Bawm, Pangkhua, Lushai, Khumi, Khyang, Mro, and Chak communities among others, each with their own languages, customs, and social structures, have historically been governed by a customary law system that is both highly developed and fundamentally different from the general law of Bangladesh.

The legal status of customary law in the Chittagong Hill Tracts is governed primarily by the Chittagong Hill Tracts Regulation of 1900, a colonial-era statute that created a system of local governance through headmen and chiefs and that recognised the applicability of customary law to disputes within the indigenous communities. The Regulation remains in force in Bangladesh today, having survived independence and the subsequent political changes with some modifications. The recognition of customary law by the Regulation is significant but incomplete:

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it applies to disputes between members of the same community but not to disputes between members of different communities, and it does not address the relationship between customary law and the general law of Bangladesh in cases where they conflict.

The Chittagong Hill Tracts Peace Accord of 1997, signed between the government of Bangladesh and the Parbatya Chattagram Jana Samhati Samiti, represented a significant political commitment to the recognition and protection of the customary rights of the indigenous communities, including their customary law. The Accord established a Regional Council and three Hill District Councils with authority over specified matters, including the protection of indigenous customary law. The implementation of the Accord has been incomplete and contested, and the land rights provisions in particular have not been fully implemented, but the Accord represents an important political recognition of the principle that the indigenous communities of the Hill Tracts have the right to be governed by their own customary law in matters affecting their internal community life.

The personal law dimensions of the Chittagong Hill Tracts customary law system are of particular significance. Marriage practices, inheritance rules, and family obligations vary significantly between communities and are governed by customary norms that in many cases reflect a more egalitarian approach to gender than either classical Hindu or Hanafi law. The Chakma customary law, for example, recognises women's rights to inherit property in circumstances where the classical Dayabhaga rules would deny inheritance, and the marriage practices of many Hill Tracts communities do not conform to the models imposed by either the Hindu or Muslim personal law frameworks. The recognition of these customary practices as legitimate and enforceable law is both a matter of justice to the indigenous communities and a test case for Bangladesh's commitment to genuine legal pluralism.

The international framework of indigenous peoples' rights, established by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the General Assembly in 2007 and which Bangladesh voted in favour of, provides an important normative basis for the recognition and protection of indigenous customary law. Article 34 of UNDRIP recognises the right of indigenous peoples to promote, develop, and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices, and in cases where they exist, juridical systems or customs, in accordance with international human rights standards. The challenge for Bangladesh is to operationalise this recognition within the framework of its constitutional commitment to the rule of law, which is a challenge that requires sophisticated thinking about the relationship between legal pluralism and constitutional unity.

CHAPTER EIGHTY-EIGHT: THE CONSTITUTIONAL FRAMEWORK AND THE TENSION OF EQUALITY

Section 88.1: The Constitutional Guarantee of Equality and Its Limits

The Constitution of Bangladesh contains provisions of considerable ambition and apparent clarity on the question of equality. Article 27 provides that all citizens are equal before the law

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and are entitled to equal protection of the law. Article 28 prohibits the state from discriminating against any citizen on grounds of religion, race, caste, sex, or place of birth, and specifically provides that women shall have equal rights with men in all spheres of state and public life. Article 31 guarantees the right to equal treatment under the law.

These provisions, if applied literally and comprehensively, would seem to render the entire personal law system unconstitutional. A system that applies different rules to citizens based on their religion, and that applies rules which systematically disadvantage women compared with men of the same religious community, appears on its face to violate Articles 27, 28, and 31. The question of why the personal law system has not been struck down as unconstitutional is therefore both legally and politically important, and the answer illuminates the complex relationship between formal constitutional norms and the political realities that determine how those norms are actually applied.

The first and most important part of the answer lies in Article 41 of the Constitution, which guarantees the right of every citizen to profess, practise, and propagate religion. This right creates a constitutional space for religious practice that includes, in the understanding of most constitutional lawyers in Bangladesh, the governance of personal affairs by religious law. The argument is that the application of Islamic inheritance rules to Muslims, or of the Dayabhaga rules to Hindus, is not unconstitutional discrimination but a lawful accommodation of religious freedom, because the rules in question are part of the religious practice of the communities they govern.

This accommodation argument is, however, philosophically contested in ways that the courts have not fully worked out. The critical question is whether religious freedom protects the right of a religious community to have its internal affairs governed by its own religious norms even when those norms disadvantage individual members of the community, particularly women, in ways that they would not choose to accept if they had a genuine choice. Feminist legal theorists have argued powerfully that the accommodation of religious personal law systematically disadvantages women within religious communities by denying them the equal protection of the state's secular law while doing nothing to equalise their position within the religious framework. The accommodation, on this analysis, is not neutral between men and women of the same religious community; it privileges the male members of the community, who benefit from the advantageous provisions of personal law, over the female members, who bear its burdens.

The Supreme Court of Bangladesh has not definitively resolved the tension between the equality provisions of the Constitution and the religious personal law system. The courts have generally avoided direct confrontation with the constitutional status of personal law, preferring to resolve specific cases through interpretation of statutory provisions and through the application of equitable principles rather than through constitutional invalidation. This avoidance strategy has preserved the system's formal existence while allowing gradual progressive development through case law, but it has also left the fundamental constitutional question unresolved and has done little to address the most significant gender inequities in the system.

Section 88.2: Constitutional Harmonisation as Judicial Methodology

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The approach that the courts of Bangladesh have most often adopted when confronting the tension between personal law and constitutional equality is what may be called constitutional harmonisation, reading personal law provisions in the light of constitutional equality principles rather than striking them down as unconstitutional. This approach has produced some important progressive developments, of which the Nelly Zaman case on restitution of conjugal rights and the Shishubar Dhali case on stridhan inheritance are examples, but it is limited in its reach by the need to find at least a plausible textual or jurisprudential basis for the constitutionally harmonised interpretation.

The methodology of constitutional harmonisation in the personal law context draws on tools that are available both in the constitutional law tradition and in the religious jurisprudential traditions. In the Islamic jurisprudential tradition, the tool of maslaha mursala, unrestricted public interest, has been invoked by reformist scholars to justify modifications to classical rules that cannot be derived from the textual sources but that serve the broad purposes of Islamic law. In the Hindu jurisprudential tradition, the recognition that the Dharmashastra texts are not univocal and that the duty of the judge is to identify the most just applicable principle, rather than mechanically to apply a single text, provides a similar basis for creative interpretation.

The limitation of constitutional harmonisation as a reform methodology is that it requires the existence of a plausible jurisprudential basis for the constitutionally desirable outcome within the relevant religious tradition. Where the classical rules are clear and the traditional scholars have consistently applied them without significant internal dissent, the space for constitutionally harmonised interpretation is narrow. This is particularly true of the inheritance rules, where the Quranic texts are unusually specific and where the classical jurists elaborated those texts with great care and consistency. A court that wished to declare that Muslim women are constitutionally entitled to equal inheritance shares with their brothers would be making a constitutional decision that could not be plausibly grounded in any mainstream position within the Islamic jurisprudential tradition, and that would therefore be experienced by the Muslim community as a secular overriding of divine law rather than as a constitutionally defensible interpretation of the law.

The path of legislative reform is therefore not merely a political preference but a jurisprudential necessity in matters where the classical rules are clear and the constitutional challenge to them is fundamental. This observation leads directly to the political economy of personal law reform, to which the analysis will turn after examining the international human rights framework that provides the external normative standards against which Bangladesh's personal law system is increasingly being evaluated.

CHAPTER EIGHTY-NINE: THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK AND ITS BANGLADESH IMPLICATIONS

Section 89.1: CEDAW and the State Obligation of Non-Discrimination

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The Convention on the Elimination of All Forms of Discrimination Against Women, to which Bangladesh acceded in 1984, represents the most comprehensive and most legally significant international human rights instrument applicable to the question of personal law reform. CEDAW requires states parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations (Article 16), to ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property (Article 16(1)(h)), and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women (Article 2(f)).

Bangladesh's accession to CEDAW was, however, accompanied by reservations on two provisions that are directly relevant to personal law: Articles 2 and 16(1)(c), (f). The reservation on Article 2 states that Bangladesh will comply with the provision except where it conflicts with Sharia law. The reservation on Article 16 declares that Bangladesh does not consider itself bound by Article 16(1)(c) and (f), which require equal rights in matters of marriage, divorce, and custody, on the same grounds of conflict with Sharia law.

These reservations have been strongly criticised by the CEDAW Committee and by international human rights scholars on the ground that they are incompatible with the object and purpose of the Convention, which is precisely to eliminate discrimination in personal and family matters. The Vienna Convention on the Law of Treaties provides in Article 19(c) that a reservation is impermissible if it is incompatible with the object and purpose of the treaty, and there is a strong argument that a reservation that excludes the central subject matter of a gender equality convention from the convention's scope is incompatible with its object and purpose in this sense. Whether or not this legal argument is correct, the political and normative reality is that Bangladesh's reservations to CEDAW create a significant gap between the international commitments it has formally accepted and those it has actually undertaken to perform in the most important area of gender inequality.

The CEDAW Committee has on multiple occasions addressed Bangladesh's personal law system in its consideration of the country's periodic reports. CEDAW found the constitutional and legal frameworks discriminatory, violating Articles 2 and 5, 15, and 16 of the Women's Convention, and advised Bangladesh to develop a clear legislative framework to safeguard rural women's rights to inheritance and land ownership. ResearchGate The Committee's repeated recommendations on personal law reform represent an important source of international pressure on the Bangladeshi government, but the government's response has consistently been to acknowledge the recommendations while citing the constraints of religious and political conditions as reasons for the slow pace of change.

The Optional Protocol to CEDAW, which Bangladesh has not ratified, would allow individual women to bring communications to the CEDAW Committee alleging violations of the Convention by the state. The absence of Bangladesh's ratification of the Optional Protocol means that individual women who are denied rights under the personal law system have no access to the international human rights complaint mechanism, and their only avenue for challenging the system is through the domestic courts, whose capacity to address the fundamental constitutional tensions has been limited by the prudential considerations discussed in the preceding chapter.

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Section 89.2: The ICCPR, ICESCR, and Universality of Rights

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which Bangladesh has ratified, provide additional international normative standards applicable to the personal law question. Article 26 of the ICCPR, which prohibits discrimination on any ground including sex, has been interpreted by the Human Rights Committee as applying to all areas of law, including private law and personal law, and not merely to discrimination in the direct exercise of rights by the state. The Human Rights Committee's general comment on the equality of rights between men and women (General Comment No. 28) makes clear that the obligation of non-discrimination under the Covenant requires states to ensure that their private law systems, including personal law, do not discriminate on the basis of sex.

The application of these international obligations to Bangladesh's personal law system is complicated by the same political and religious factors that constrain domestic constitutional reform. The government's standard response to international criticism of personal law is to cite the constitutional guarantee of religious freedom as a reason why it cannot impose uniform secular law on all communities, and to emphasise the sensitivity of religious personal law to the Muslim majority. This response has a degree of legitimacy in terms of democratic politics, but it is insufficient as a legal argument because international human rights law does not recognise a religious freedom exception to the obligation of non-discrimination on the basis of sex. The Human Rights Committee has been clear that the right to freedom of religion does not include a right to compel other members of one's religious community to observe discriminatory religious practices against their will.

The domestic discourse on international human rights obligations in the context of personal law reform in Bangladesh has been relatively underdeveloped compared with the discourse in some other jurisdictions. There is no established tradition of human rights litigation in this area, and the courts have not generally engaged with the international obligations in their personal law decisions in the systematic way that would be characteristic of jurisdictions with a stronger international human rights orientation. The development of a more sophisticated engagement with international human rights law in the context of personal law reform is one of the important tasks for the legal scholarship community that the Bangladesh SJD program, discussed in Part Eight, could contribute to in significant ways.

Section 89.3: The UN Sustainable Development Goals and Gender Justice in Personal Law

The Sustainable Development Goals adopted by the United Nations in 2015, to which Bangladesh committed itself as part of the 2030 Agenda for Sustainable Development, contain explicit commitments to gender equality (SDG5) and to the reduction of inequalities (SDG10) that are directly relevant to the personal law question. SDG5 includes specific targets of eliminating all forms of discrimination against all women and girls everywhere (Target 5.1), ending all forms of violence against and exploitation of women and girls (Target 5.2), and eliminating all harmful practices including child marriage and gender discrimination in inheritance (Target 5.a, which specifically addresses women's access to ownership and control over land and other assets and inheritance rights).

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Target 5.a of the SDGs, which specifically mentions inheritance rights, is of particular significance because it represents an explicit international commitment to the reform of discriminatory inheritance practices. Bangladesh's Voluntary National Review reports to the High Level Political Forum on Sustainable Development, submitted in 2017, 2020, and 2023, have all acknowledged the challenge of gender-discriminatory personal law but have not articulated concrete legislative commitments to address it. The gap between the SDG commitment and the legislative action represents a form of accountability deficit that civil society organisations, both domestic and international, have increasingly sought to highlight.

The connection between inheritance reform and SDG2 (Zero Hunger), SDG3 (Good Health and Well-being), SDG4 (Quality Education), and SDG8 (Decent Work and Economic Growth) is supported by a substantial body of development research. Women who control productive assets, including land and property inherited from their parents, are demonstrably more likely to invest those assets in the health, education, and welfare of their children, and are better positioned to participate in formal employment and economic life. The argument for personal law reform is therefore not merely an argument about legal principle but an argument about development effectiveness, one that should be compelling to a government that has committed itself to the SDGs and that has demonstrated, through its track record on poverty reduction and other development indicators, a serious commitment to evidence-based policy.

CHAPTER NINETY: THE COMPARATIVE EXPERIENCE OF PERSONAL LAW REFORM IN MUSLIM-MAJORITY COUNTRIES

Section 90.1: Tunisia - The Most Radical Reform and Its Lessons

The experience of Tunisia with personal law reform is the most frequently cited and most studied example in the comparative literature, and for good reason: Tunisia's 1956 Code du Statut Personnel (Personal Status Code) represents the most comprehensive and most radical reform of Muslim personal law that any Muslim-majority country has undertaken, and its durability and consequences provide important lessons for reform efforts elsewhere.

The Tunisian reforms were enacted in 1956, immediately following independence, by the government of Habib Bourguiba, a secular nationalist leader who was deeply committed to the modernisation of Tunisian society and who understood the reform of personal law as a central element of that modernisation project. The Code abolished polygamy entirely, on the jurisprudential basis of the reformist reading of Quran 4:129 discussed earlier in this chapter. It established a uniform system of civil marriage and divorce applicable to all Tunisians. It required judicial divorce rather than allowing unilateral talaq, giving both spouses equal access to divorce through the courts. It set a minimum age of marriage and required registration of all marriages before a civil officer.

These reforms were enacted against significant religious opposition and were justified by Bourguiba not on purely secular grounds but in jurisprudential terms: the state, as the guardian of the public interest and as a legitimate interpreter of Islamic law in the context of the modern

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world, had the authority to choose between available positions within the Islamic jurisprudential tradition in ways that served the best interests of society. This justification, which invokes the tradition of siyasa shariyya (governance in accordance with the principles of Islamic law) to legitimate legislative reform, represents one of the most important and most contested arguments in the theory of Islamic legal modernism.

The Tunisian Code has survived for nearly seven decades through significant political changes, including the democratic transition following the 2011 revolution that brought Islamist parties to power for a period. The survival of the Code through periods of Islamist political influence is significant evidence that personal law reform, once enacted and once the population has adjusted its expectations and practices to the new framework, can achieve a degree of legitimacy that makes it resistant to reversal even when the political conditions that produced it no longer obtain. The women who have grown up in Tunisia since 1956 knowing that they have the right to marry by their own choice and to divorce on equal terms with their husbands have incorporated these rights into their understanding of their identity as Tunisian citizens, and any government that attempted to reverse them would face formidable opposition.

The lessons of the Tunisian experience for Bangladesh are significant but must be appropriately qualified. The political conditions of Bangladesh in 2026 are not those of Tunisia in 1956. Tunisia in 1956 was a small, relatively homogeneous society (with a largely Maliki rather than Hanafi population, which is jurisprudentially significant) under a secular nationalist government with a genuine ideological commitment to women's equality. Bangladesh is a large, populous, and more religiously diverse society with a more complex political landscape in which religious parties and movements play a significant role. The secular nationalist tradition in Bangladesh, embodied in the founding ideology of the 1971 Liberation War, is powerful but contested in ways that Bourguiba's secular nationalism in Tunisia was not. Any attempt to replicate the Tunisian approach in Bangladesh would need to be adapted to these very different conditions, which means that the specific content of a Bangladeshi reform program would need to be negotiated with different interlocutors and justified within a different political and religious discourse.

Section 90.2: Morocco - The Moudawwana Reform of 2004 and the Islamic Framework

The Moroccan experience with personal law reform is in many ways more directly instructive for Bangladesh than the Tunisian experience, because the Moroccan approach placed much greater emphasis on working within the Islamic jurisprudential tradition rather than overriding it through secular legislative authority. The reform of the Moudawwana, Morocco's Family Law Code, enacted in 2004 under King Mohammed VI, represents the most significant reform of Muslim personal law in the Arab world in recent decades and has been widely studied as a model of how reform can be achieved in ways that command religious legitimacy.

The process that led to the 2004 reform was itself significant. King Mohammed VI, in his capacity as Commander of the Faithful (Amir al-Mu'minin), established a Royal Commission composed of both Islamic scholars and women's rights advocates, and charged it with developing reform proposals that could be justified within the framework of Islamic jurisprudence. The Commission spent three years consulting widely, reviewing the classical jurisprudential

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literature, examining comparative experience in other Muslim-majority countries, and developing proposals that were presented not as a departure from Islamic law but as a recovery of Islamic law's most justice-promoting possibilities.

The 2004 Moudawwana introduced several significant changes to Moroccan personal law. It raised the minimum age of marriage to eighteen for both men and women. It required judicial approval for polygamy, with the court required to verify that the husband could treat both wives equitably and that the existing wife had been informed and did not object. It gave both spouses equal rights in matters of divorce, allowing either spouse to petition the court for dissolution of marriage. It significantly reformed the rules on child custody and guardianship to give the mother's interests greater weight. It reformed the financial rights of divorced women, introducing provisions for the division of marital property and for maintenance payments beyond the classical idda period.

The jurisprudential basis for these reforms was carefully developed in the Moudawwana's preamble and in the accompanying explanatory materials. The reform of polygamy was justified on the basis of the maqasid al-shariah, specifically the objective of protecting women and children from harm, and on the application of the principle of sadd al-dhara'i, the blocking of means to harm, to the practical reality that polygamy in contemporary Morocco was more likely to produce injustice than justice. The reform of divorce rights was justified by reference to the principle of mutual consent (muwafaqa) as a condition of valid marriage contracts and by the extension of the khul mechanism to cases where the wife can demonstrate genuine harm. The reform of custody was justified by the welfare principle (hifz al-nasl, the protection of offspring) as the paramount consideration in all matters relating to children.

Bangladesh needs to codify its Muslim family laws, and if one looks into other Muslim countries, they have already codified their laws in compliance with Sharia to make them more reliable. Countries like Morocco, Tunisia, Indonesia, and Egypt have enacted family law codes that combine Islamic jurisprudential principles with contemporary standards of gender justice. Allmultidisciplinaryjournal This observation in the recent scholarship on codification of Muslim personal law in Bangladesh reflects a growing recognition among legal scholars and advocates that the comparative experience of Islamic legal modernism in other jurisdictions provides important methodological resources for the Bangladeshi reform project.

Section 90.3: Indonesia - Democratic Pluralism and the Kompilasi Hukum Islam

The Indonesian experience with Muslim personal law provides yet another model, distinctive in being developed in the world's largest Muslim-majority democracy and in being grounded in a tradition of Islamic thought, the Syafi'i school rather than the Hanafi school, that differs from Bangladesh's predominant tradition. The Kompilasi Hukum Islam (KHI), the Compilation of Islamic Law enacted by presidential instruction in 1991, represents the Indonesian state's codification of Muslim personal law and has been the subject of considerable scholarly attention both domestically and internationally.

The KHI was developed through a process of wide consultation with Islamic scholars, including representatives of the major Islamic organisations Nahdlatul Ulama and Muhammadiyah, and it

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reflects a relatively conservative approach that codifies the dominant scholarly positions rather than introducing radical reform. However, the process of codification itself represented a significant step toward systematic and accessible personal law, and subsequent debates within Indonesia about the reform of the KHI have been among the most intellectually sophisticated discussions of Islamic legal modernism in any Muslim-majority society.

The Counter Legal Draft of the KHI, developed by a team of scholars led by Siti Musdah Mulia and published in 2004, proposed radical reforms to the KHI including the abolition of polygamy, the equalisation of inheritance shares between male and female heirs, the right of a Muslim woman to conclude a valid marriage without a male guardian (wali), and the recognition of interfaith marriage. These proposals generated enormous controversy and were ultimately not adopted, but the academic and public debate they provoked demonstrated the sophistication and confidence of Indonesian Islamic legal scholarship and the existence of a substantial constituency for reform within the Islamic framework.

The Indonesian experience is instructive for Bangladesh in several respects. First, it demonstrates that sophisticated Islamic jurisprudential scholarship advocating for reform is entirely compatible with genuine Islamic commitment and with deep knowledge of the classical tradition. The scholars who produced the Counter Legal Draft were not secular intellectuals dismissing religious tradition but Muslim scholars working within the tradition and arguing, on jurisprudential grounds, for a more justice-promoting application of Islamic principles. Second, the Indonesian experience demonstrates that the mere existence of sophisticated reform proposals does not automatically translate into legislative change, and that the political mobilisation of conservative Islamic forces can effectively block reform even in a democracy with strong civil society institutions. Third, the Indonesian experience demonstrates the importance of institutional settings for legal scholarship, including the major Islamic universities (UIN, formerly IAIN) and the centres for Islamic legal studies that have provided the intellectual infrastructure for sophisticated jurisprudential debate.

Section 90.4: Egypt and the Doctrine of Siyasa Shariyya

Egypt's experience with Muslim personal law reform, spread across multiple periods of legislative intervention beginning in the 1920s, provides the deepest historical background to the Islamic legal modernism debate and illustrates both the potential and the limitations of the siyasa shariyya approach to reform.

The siyasa shariyya doctrine, developed by the great medieval jurist Ibn Taymiyya and elaborated by his followers, provides that the ruler has the authority to make regulations (siyasa) on matters not directly addressed by the revealed sources of Islamic law (sharia) for the purpose of promoting public welfare, and that in areas where the sharia does provide rules but where multiple positions are available within the tradition, the ruler may select and implement the most beneficial position through legislative authority. This doctrine was invoked by Egyptian reformers beginning in the 1920s to justify legislative modifications of personal law rules, on the ground that the legislature, acting as the modern equivalent of the Muslim ruler, had the authority to choose between available positions within the Islamic jurisprudential tradition and to codify the chosen position as binding law.

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The Egyptian personal status laws enacted from 1929 onwards, culminating in the significant reforms of 1979 and 2000, drew on this doctrine to introduce a series of progressive changes including the restriction of polygamy through procedural requirements, the extension of the wife's grounds for judicial divorce, and the reform of custody rights. The 2000 amendment to Egyptian personal law, which introduced khul as a statutory right without requiring the husband's agreement (a significant departure from the classical position that khul requires the husband's consent), was particularly significant. It was justified on the basis of the Islamic principle that no one should be compelled to remain in a relationship that causes harm (la darar wa la dirar), and it represented the most significant extension of women's divorce rights in Egyptian law since the 1929 reforms.

The relevance of the siyasa shariyya doctrine to Bangladesh is direct. Bangladesh has a parliamentary legislature that is capable of enacting personal law reform, and the doctrine provides a jurisprudential basis for treating that legislature's reform of Islamic personal law as a legitimate exercise of Islamic governance authority rather than as a secular overriding of divine law. The critical condition is that the reform be justified in Islamic jurisprudential terms rather than merely in secular terms, and that the justification demonstrate a genuine engagement with the tradition rather than a post hoc rationalisation of predetermined conclusions. This condition is demanding but it is not impossible to satisfy, as the Moroccan and Egyptian experiences demonstrate.

CHAPTER NINETY-ONE: THE WOMEN'S REFORM COMMISSION AND THE CURRENT REFORM MOMENT

Section 91.1: The Commission's Mandate and Its Proposals

The current political moment in Bangladesh, following the significant political changes of 2024, has produced an environment in which fundamental reform of personal law is being seriously discussed at the level of official government commissions for the first time in many years. The Women's Reform Commission, established in the period following the political transition, has produced proposals that go further in their ambition for gender equality in personal law matters than any previous official body in Bangladesh's history.

The Women's Reform Commission in Bangladesh has sparked both hope and fury with its sweeping proposals, including equal inheritance, marital property rights, bans on child marriage and polygamy, challenges to long-standing religious and cultural norms. This is not just a Muslim woman's issue: Hindu, Christian, Buddhist, and Indigenous women also face deep inequality, and the commission's proposals explicitly address this multi-communal dimension of personal law reform. The Business Standard The breadth of the Commission's mandate and the comprehensiveness of its proposals represent a significant departure from the incremental, issue-specific approach that has characterised previous reform efforts, and they signal a political willingness to confront the fundamental structure of the personal law system rather than merely adjusting its most egregious specific provisions.

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The proposal for equal inheritance between male and female heirs across all communities is the most politically explosive element of the Commission's programme. For the Muslim community, as discussed extensively earlier in this chapter, equal inheritance runs directly against the Quranic rules that the classical tradition treats as a direct divine legislation of specific shares. For the Hindu community, equal inheritance would require fundamental reform of the Dayabhaga rules that determine the distribution of family property. For both communities, the proposal engages with the deepest jurisprudential and theological questions about the relationship between divine authority and human legislative competence.

The proposal to ban polygamy is less jurisprudentially radical than the inheritance proposal, because there is a sophisticated reformist argument within the Islamic tradition for the prohibition of polygamy on the basis of the Quranic condition of equitable treatment. But politically, in the context of Bangladesh's predominantly Muslim population and the significant influence of religious scholars and movements, the proposal to prohibit polygamy entirely is potentially more explosive in its immediate political consequences than the inheritance proposal, because it would be experienced as a direct challenge to a practice that the Quran explicitly permits and that a significant portion of the population continues to regard as religiously sanctioned.

The proposal for uniform family law applicable to all communities, which would replace the plural personal law system with a single code governing marriage, divorce, inheritance, and family relations for all Bangladeshi citizens regardless of their religion, is the most ambitious systemic proposal and the one that raises the deepest questions about the relationship between state, religion, and community in Bangladesh. The uniform civil code debate has a long history in South Asia: India has been debating the issue since the 1940s, and the Uniform Civil Code was included in the Indian Constitution's Directive Principles (Article 44) as an aspiration that the state should endeavour to achieve. India's ruling party has recently revived the debate with considerable political intensity, but implementation remains distant because of the political, religious, and institutional complexities involved.

In Bangladesh's context, the proposal for a uniform family law would require the government to make a decision about the constitutional status of personal law that the courts have carefully avoided making: whether the constitutional guarantees of equality and non-discrimination override the constitutional guarantee of religious freedom in the domain of personal law. The resolution of this question depends partly on the interpretation of the Constitution's own provisions and partly on the political will to implement a resolution that is likely to generate significant religious opposition.

Section 91.2: The Politics of Opposition and the Dynamics of Reform

The opposition to personal law reform in Bangladesh comes from multiple directions, and understanding its character and dynamics is essential for any realistic assessment of the reform agenda's prospects. The opposition is not monolithic, and different elements of the conservative coalition have different objections and different degrees of intransigence.

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The most absolute opposition comes from the religious scholars and movements who regard the existing personal law, at least in its Islamic dimension, as divine law that cannot be modified by human legislative authority. This position is philosophically coherent within a certain understanding of the Islamic jurisprudential tradition, though it is contested by the reformist scholars discussed in earlier sections of this chapter. Its political salience in Bangladesh derives from the substantial popular following of the organisations that advocate it, from the violence that has historically been deployed against reformist positions by organised groups, and from the political calculations of mainstream parties that have often been unwilling to confront religious opposition on personal law questions for fear of electoral consequences.

A more moderate opposition comes from members of both the Muslim and Hindu communities who are not committed to the absolute authority of classical religious law but who are concerned about the social consequences of rapid reform in a society that is not ready to implement it effectively. This opposition deserves more serious intellectual engagement than it typically receives from reformers. The argument that reform enacted without adequate social preparation, institutional capacity, and public education will not achieve its intended goals and may produce unintended negative consequences is not simply a cover for conservatism; it reflects genuine observations about the gap between formal legal change and substantive social change that the sociology of law has repeatedly documented. The history of personal law reform in South Asia provides multiple examples of reforms that were enacted in good faith but that proved difficult to implement in practice because of gaps in enforcement capacity, public awareness, and social acceptance.

The opposition from within the Hindu community to the reform of Hindu personal law has a distinctive character that reflects the community's position as a religious minority in a Muslim-majority state. Some Hindu leaders and scholars have argued that the existing Hindu personal law, whatever its deficiencies from the perspective of gender equality, is a source of cultural identity and communal continuity that the community has an interest in preserving. The argument is that the erosion of distinctive personal law rules would accelerate the cultural assimilation of the Hindu community into the majority culture in ways that would threaten its long-term survival as a distinct community. This argument is not without force, but it has a dark side: it tends to privilege the communal survival interests of the community as a whole over the individual rights of the women within it, who bear the greatest costs of the current system.

The political economy of personal law reform is shaped by the structure of electoral incentives in Bangladesh's parliamentary democracy. Personal law reform, particularly reform that challenges the Islamic rules applicable to the Muslim majority, carries significant political risks for any government that proposes it and generates uncertain electoral benefits. The constituency that most directly benefits from reform, women who are adversely affected by the current system, is not organised as a political bloc in ways that create strong direct electoral pressure for reform. The constituency that opposes reform, religious organisations and their followers, is both organised and vocal in ways that create strong direct electoral pressure against reform. The result is a systematic political bias against reform that no government has been able to overcome in Bangladesh's democratic history.

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Breaking this political impasse requires either a change in the political economy itself, by building a reform coalition that is large and motivated enough to overcome the religious opposition, or a strategy that decouples personal law reform from direct political contestation by pursuing it through processes, such as judicial interpretation or constitutional adjudication, that are insulated from immediate electoral pressure. Neither of these approaches is easy or certain of success, but both offer more promise than the continuation of the status quo.

CHAPTER NINETY-TWO: THE SHALISH, CUSTOMARY DISPUTE RESOLUTION, AND THE LIMITS OF FORMAL LAW

Section 92.1: The Persistence and Significance of Informal Justice

Any honest analysis of personal law in Bangladesh must grapple with a phenomenon that formal legal analysis tends to marginalise: the overwhelming predominance of informal dispute resolution mechanisms in the actual settlement of family disputes for the majority of the population. The shalish, the village-level mediation and arbitration mechanism discussed briefly in Part One of this commentary, remains the primary institutional framework within which family disputes, including disputes about marriage, divorce, maintenance, inheritance, and custody, are resolved in rural Bangladesh and in significant portions of urban Bangladesh as well. Understanding why this is so, and what it means for the reform agenda, is essential for any realistic assessment of the personal law system's actual operation.

The shalish is not a single institution but a family of related practices varying considerably by region, community, and circumstance. In its most common form, it involves a gathering of community members, usually including the village headman (matbor or sheikh), respected elders, and male community members, who hear the parties to a dispute and attempt to broker a settlement acceptable to both sides. The shalish operates on principles of community norms, mutual obligation, and compromise rather than on formal legal rules, and its authority derives from social pressure and community sanction rather than from state enforcement.

The shalish's persistence in the face of the formal legal system reflects several important realities. The formal courts are expensive, slow, physically inaccessible to many rural people, and require the assistance of lawyers whose fees are beyond the means of most people. The shalish is cheap, fast, locally available, and requires no professional assistance. The shalish operates in the language of the parties and within a cultural framework that the parties understand and accept; the formal courts operate in an alien procedural framework that many people find intimidating and incomprehensible. The outcomes of the shalish, whatever their formal legality, are likely to be actually implemented because they have the sanction of the community; the outcomes of formal courts, while legally binding, may be practically unenforceable for people without the resources to pursue enforcement.

The shalish's treatment of women is a matter of serious concern that the reform literature has documented extensively. Women are rarely permitted to participate directly in shalish proceedings; they are typically represented by male relatives, and the perspective of the male

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members of the community tends to dominate the settlement that emerges. The settlements reached in the shalish in matters of divorce, maintenance, and inheritance frequently fail to reflect the legal rights to which women are entitled under the formal law, providing them with less than their legal entitlement in exchange for community peace and family honour. Although the Family Courts Ordinance 1985 provides an effective forum for all communities to seek legal redress in disputes relating to dissolution of marriage, dower, maintenance, restitution of conjugal rights, and guardianship of children, in practice most family disputes in Bangladesh are settled through informal mechanisms rather than the formal courts. Blast

The challenge for the reform agenda is how to address the injustice perpetrated through the shalish without simply abolishing an institution that, despite its deficiencies, serves real needs that the formal legal system cannot serve. A reform approach that relies exclusively on formal legal remedies to protect women's rights will, in the Bangladesh context, leave the vast majority of women unprotected because the conditions of access to formal justice do not obtain for most of them. A more realistic reform approach must address the shalish itself, seeking to reform it from within by building awareness of formal legal rights among women, training shalish participants in the legal framework applicable to the disputes they are resolving, engaging community and religious leaders in the promotion of justice-promoting norms, and strengthening the linkages between the shalish and the formal legal system so that women who are denied justice in the informal forum can more easily access the formal one.

The Union Parishad Arbitration Councils established under the Muslim Family Laws Ordinance represent a hybrid institution, part of the formal legal system but operating with significant informality and community participation, that offers a potential model for a reformed approach to family dispute resolution. The Arbitration Council is supposed to attempt reconciliation in cases of divorce and to adjudicate on requests for permission to contract additional marriages, and it therefore has an institutional role in personal law matters that goes beyond the purely informal shalish. The effectiveness of the Arbitration Council mechanism has been limited by inadequate resources, insufficient training of council members, low awareness among the affected population, and the social pressures that make it difficult for women to assert their legal rights even when the formal mechanism is technically available. Reform of the Arbitration Council system, alongside broader reform of the substantive personal law rules it is meant to enforce, represents an important element of any realistic programme for personal law reform in Bangladesh.

Section 92.2: NGO Interventions and Legal Literacy

The role of non-governmental organisations in promoting women's legal rights in the context of personal law is an important and often underappreciated element of the Bangladesh legal landscape. Organisations including the Bangladesh National Women Lawyers Association (BNWLA), the Bangladesh Legal Aid and Services Trust (BLAST), Ain o Salish Kendra (ASK), and many others have provided legal aid services to women who would otherwise be unable to access formal legal remedies, conducted legal literacy programmes to build women's awareness of their formal rights, engaged in strategic litigation to establish important precedents, and advocated for legislative reform through policy engagement and public communication.

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The legal literacy programmes run by these organisations address the specific personal law rights of women in their communities, including the right to mahr, the right to maintenance during and after marriage, the right to register the kabinnama with protective clauses including tafwid, the right to judicial divorce, and the inheritance rights available under the applicable personal law. These programmes represent a form of legal empowerment that is complementary to, and in many ways more immediately effective than, formal legal reform, because they help women to assert the rights they already have under the existing formal law before waiting for the new rights that reform would provide.

The strategic litigation work of NGOs and legal aid organisations has produced some of the most important progressive developments in the case law on personal law. Cases brought with the support of organisations like ASK and BLAST have generated precedents on maintenance, divorce procedure, and custody rights that have expanded women's practical access to legal protection without requiring statutory reform. The cumulative effect of this litigation, while less dramatic than comprehensive legislative reform, represents a significant body of progressive jurisprudence that provides a foundation for the more ambitious reforms that the current political moment may make possible.

CHAPTER NINETY-THREE: THE RIGHTS OF CHILDREN UNDER THE PERSONAL LAW SYSTEM

Section 93.1: Child Custody, Guardianship, and the Welfare Principle

The rights of children under the personal law system of Bangladesh raise questions that are in some respects even more urgent than the rights of women, because children are entirely unable to assert their own interests and are therefore wholly dependent on the legal framework to protect them. The personal law applicable to child custody and guardianship in Bangladesh reflects the classical Hanafi rules in their colonial-era modified form, and those rules, while containing important elements of child protection, are in other respects out of step with the contemporary welfare-centred approach to child law.

Under the classical Hanafi rules, the mother has the right of custody (hadana) of young children, daughters until puberty and sons until approximately seven years of age, after which custody passes to the father. The rationale for this age-based rule is that the mother is best placed to provide the physical care that young children need, while the father is better placed to provide the education, moral formation, and financial support that older children require. These age-based rules reflected the social conditions and gender roles of the classical period and do not necessarily reflect the best interests of children in the radically different social conditions of contemporary Bangladesh.

The Guardian and Wards Act of 1890, which applies in Bangladesh and governs the appointment of guardians by the courts, incorporates the welfare principle by requiring the court to give paramount consideration to the welfare of the ward in deciding guardianship questions. This welfare principle, applied by the courts in the numerous custody disputes that come before them,

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has provided a basis for departing from the mechanical application of the Hanafi age rules in cases where the welfare of the specific child clearly requires it. The case law has developed a relatively sophisticated welfare-based analysis that takes into account the child's physical and emotional needs, the quality of the relationship with each parent, the financial resources available, and other relevant factors.

The continuing tension between the classical personal law's age-based rules and the welfare principle's case-by-case analysis has produced a body of case law that is often difficult to predict and that depends heavily on the individual judge's interpretation of the welfare standard. Clarification of the law, through legislative reform that explicitly subordinates the age-based custody rules to the welfare principle, would reduce uncertainty and improve the consistency of outcomes in custody disputes. Some comparative jurisdictions, including the United Kingdom in its Children Act of 1989 and many other common law countries, have adopted this approach, making the welfare of the child the paramount consideration in all decisions relating to the upbringing of children and relegating traditional age-based rules to the status of guidelines rather than binding rules.

Section 93.2: Child Marriage and the Child Marriage Restraint Act

The issue of child marriage intersects with personal law in a direct and damaging way. The Child Marriage Restraint Act of 2017, which replaced the earlier 1929 Act, sets minimum ages of eighteen for girls and twenty-one for boys and criminalises the solemnisation of marriages below these ages. The 2017 Act was, however, widely criticised for the inclusion of a provision allowing child marriage in "special cases" without specifying any minimum age, a provision that was inserted under significant political pressure and that effectively created an exception large enough to swallow the rule in practice.

The intersection of child marriage with personal law is significant because the validity of a marriage under the personal law applicable to the parties is distinct from the question of whether the marriage complies with the Child Marriage Restraint Act. Under the Hanafi rules, a marriage is valid if the parties are of puberty (which can be as young as nine for girls in the classical texts) and the formal requirements of the nikah are met. The Child Marriage Restraint Act imposes criminal liability on those who facilitate a marriage below the statutory minimum age, but it does not declare the marriage itself void. The result is a situation in which a child marriage is simultaneously a criminal act and a valid marriage under Islamic law, a paradox that creates serious practical difficulties for courts and families dealing with the consequences of such marriages.

The reform of child marriage law requires action on multiple fronts simultaneously. The statutory minimum age must be set at a level that is appropriate from a developmental, health, and human rights perspective, without the exception that undermines the 2017 Act's effectiveness. The validity of marriages contracted in violation of the minimum age requirement must be addressed, either by declaring them void or by providing specific remedies for girls who are married below the minimum age. The enforcement of the law must be strengthened through better coordination between local government, law enforcement, and social services. And the underlying social and economic factors that drive child marriage, including poverty, social

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insecurity, and limited educational and economic opportunities for girls, must be addressed through development policy.

CHAPTER NINETY-FOUR: TOWARDS A REFORMED PERSONAL LAW SYSTEM FOR BANGLADESH

Section 94.1: Principles for a Reform Framework

The analysis in the preceding chapters has established the diagnosis of what is wrong with Bangladesh's personal law system. This concluding chapter of Part Nine sets out the principles that should guide a reformed framework and the specific reforms that those principles require.

The first principle is the primacy of human dignity. Every legal rule governing the personal life of individuals, including their marriage, family relations, and inheritance rights, must respect and promote the inherent dignity of each person. Rules that reduce persons to the status of legal objects rather than legal subjects, that treat women as dependent auxiliaries to their male relatives rather than as autonomous individuals, and that deny children the protection to which their vulnerability entitles them, violate this principle and must be reformed.

The second principle is the equal legal status of all citizens. The Constitution's guarantee of equality before the law and equal protection of the laws is not merely a formal commitment; it is a substantive requirement that the legal system actually treats all citizens as equally worthy of legal protection and equally capable of exercising legal rights. A system that applies different rules to women of different religious communities in matters as fundamental as their right to divorce, their right to inherit property, and their right to custody of their children cannot claim to satisfy this principle.

The third principle is respect for religious and cultural identity. The reform of personal law does not require the elimination of religious difference or the imposition of a uniform secular legal standard on all communities. Religious communities have legitimate interests in the governance of their own internal affairs according to their own norms, and those interests deserve respect. The challenge is to find a framework that respects religious identity while ensuring that the accommodation of religious difference does not come at the cost of individual rights, particularly the rights of women and children within religious communities.

The fourth principle is jurisprudential legitimacy. Reform of religious personal law must engage seriously with the jurisprudential traditions of the communities it affects, not because those traditions are sacrosanct and unreformable, but because reform that lacks jurisprudential legitimacy will lack political legitimacy and will therefore fail to achieve its goals. The comparative experience reviewed in this chapter demonstrates that the most durable reforms are those that can be justified within the jurisprudential framework of the affected community, drawing on the best available resources of that tradition rather than simply overriding it.

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The fifth principle is empirical realism. Reform proposals must be grounded in an accurate understanding of how the current system actually operates, including the role of informal mechanisms like the shalish, the gap between formal rights and practical access, the diversity of practice across different regions and communities, and the social and economic conditions that shape the actual exercise of legal rights. Reform that ignores these realities will be formal in the worst sense: it will change the rules on paper without changing the lives of the people the rules are supposed to govern.

Section 94.2: Specific Reform Proposals

Building on the principles articulated above, the reform agenda for Bangladesh's personal law system may be organised around several specific areas of intervention, each of which requires both legislative action and complementary measures of institutional development, public education, and social change.

On the reform of Muslim personal law, the most urgent priorities are the strengthening of the divorce notice mechanism under the Muslim Family Laws Ordinance to ensure that women are effectively informed of their husband's talaq and that the reconciliation period is used meaningfully; the reform of the polygamy restriction to require genuine demonstrated compliance with the Quranic condition of equitable treatment, including evidence of financial capacity and the formal consent of the existing wife or wives; the codification of the wife's right to delegated divorce in a standard kabinnama and the mandatory inclusion of this right in all registered marriages; the extension of the grounds for judicial dissolution of marriage to include irretrievable breakdown after a period of separation; and the reform of the post-divorce maintenance rules to provide more adequate financial protection for divorced women, drawing on the progressive tradition of reform available within the Islamic jurisprudential framework.

On the reform of the inheritance rules, the most jurisprudentially honest approach recognises that a direct legislative override of the Quranic faraid rules is not practically achievable in Bangladesh's current political and religious environment and would not command the jurisprudential legitimacy necessary for effective implementation. The more realistic and potentially more effective approach is to address the related rules that reduce the practical benefit women receive from their formal inheritance entitlements, including the rules governing inter vivos gifts and waqf arrangements that are used to disinherit daughters, the rules governing debts and maintenance claims that reduce the residual estate available for inheritance, and the rules governing the division of marital property on divorce that leave women without protection in jurisdictions that do not recognise community of property.

On the reform of Hindu personal law, the most urgent priority is the introduction of legislation providing for the dissolution of Hindu marriages on specified grounds, modelled on the Indian Hindu Marriage Act but adapted to Bangladesh's specific conditions. This reform would give Hindu women access to a legal remedy for marital breakdown that is currently entirely unavailable to them and would reduce the dependence on illegal informal arrangements that the current situation creates. The reform of inheritance rights for Hindu daughters, providing them with equal shares in their father's estate alongside their brothers, requires more careful

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preparation because of the political sensitivity of the question within the Hindu community, but it is no less urgently needed.

On the reform of Christian personal law, the simplest and most obviously necessary reform is the amendment of the Indian Divorce Act to introduce no-fault divorce on the ground of irretrievable breakdown, equalise the grounds for divorce between husbands and wives, and simplify the procedural requirements. This reform requires no complex jurisprudential justification and should command broad support within the Christian community itself, which has long been aware of the anachronistic character of the 1869 Act.

On the reform of Buddhist personal law, the priority is the enactment of legislation providing a formal statutory framework for Buddhist marriage, divorce, and inheritance, developed in consultation with Buddhist community representatives and sensitive to the diversity of Buddhist practice in Bangladesh. The framework should respect the distinctive features of Buddhist family ethics while ensuring that the constitutional guarantee of equality is effective for Buddhist women and children.

On the reform of indigenous customary law in the Chittagong Hill Tracts, the priority is the full implementation of the Peace Accord of 1997 and the statutory recognition of the Hill District Councils' authority over matters of customary law within their territories. The reform of specific customary law rules that discriminate against women should be pursued through a process of genuine community consultation and participation rather than through imposition by the central government, in accordance with the principles of indigenous self-determination recognised by UNDRIP and implicitly accepted by Bangladesh through its vote in favour of that declaration.

Section 94.3: Institutional Infrastructure for Personal Law Reform

The legal rules of personal law do not exist in institutional isolation; they are administered, enforced, and interpreted by a network of institutions that critically determine the gap between formal rights and substantive experience. The reform of personal law rules must therefore be accompanied by the reform of the institutional infrastructure within which those rules operate.

The Family Courts established under the 1985 Ordinance represent an important institutional resource for personal law administration, but they require significant investment to be effective. Many Family Courts lack adequate physical facilities, qualified judges with specialised training in personal law, and support staff capable of managing the caseload effectively. The delay in the resolution of family law cases, which can extend over many years in the most overburdened courts, is itself a form of injustice that undermines women's access to the remedies that the law provides. Reforms to the Family Courts should include mandatory specialised training for judges in personal law, support staff training, streamlined procedures for urgent matters, and mediation services that can resolve appropriate cases more quickly than full adjudication.

The registration system for Muslim marriages, operated through the local Union Parishad structure, requires significant reform and investment. The current system suffers from low rates of registration, particularly in rural areas; inadequate supervision of registrars (kazi); insufficient enforcement of the requirement to include protective clauses in the standard kabinnama; and

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poor maintenance of registration records. The digitisation of marriage registration records, begun as a government initiative in recent years, provides an important foundation for improved record-keeping, but technical modernisation without accompanying institutional reform will not address the substantive problems of the current system.

The legal aid system, which is critical for ensuring that women without financial resources can access personal law remedies, requires substantial strengthening. The National Legal Aid Services Organisation (NLASO) established under the Legal Aid Services Act 2000 has a mandate to provide free legal services to eligible persons, but its resources are far below what would be required to meet the actual demand from women seeking personal law remedies. The strengthening of legal aid services for personal law matters, including the training of legal aid advocates in the specific requirements of personal law cases and the establishment of dedicated personal law legal aid clinics within the Family Courts, would significantly improve women's practical access to justice.

CHAPTER NINETY-FIVE: JURISPRUDENTIAL REFLECTIONS ON LEGAL PLURALISM, EQUALITY, AND JUSTICE

Section 95.1: The Philosophical Challenge of Plural Equality

The analysis in this Part has repeatedly encountered a fundamental philosophical challenge that deserves explicit reflection in its conclusion: the apparent tension between two values, legal equality and legal pluralism, that are both deeply important and that seem, at first sight, to pull in opposite directions. The commitment to legal equality, embodied in Bangladesh's constitutional provisions and in the international human rights framework, seems to require that all citizens be governed by the same rules regardless of their religion. The commitment to legal pluralism, embodied in the constitutional guarantee of religious freedom and in the recognition of the legitimate claims of diverse communities to self-governance in their internal affairs, seems to require that different communities be governed by different rules reflecting their distinctive religious and cultural identities.

This apparent tension is, however, less sharp than it first appears when one distinguishes between different dimensions of equality. Formal equality, the requirement that the same rules apply to all citizens, is one conception of equality but it is not the only one. Substantive equality, the requirement that all citizens have access to the same basic goods and protections regardless of their background, is a different and arguably deeper conception that may be compatible with different rules for different communities as long as those different rules provide equivalent levels of protection and opportunity for all. Relational equality, the requirement that the social relations within which people live be structured so as to prevent domination and subordination on the basis of characteristics like gender and religion, is yet another conception that focuses on the quality of social relationships rather than on the formal content of legal rules.

The most philosophically defensible approach to the tension between equality and pluralism in the personal law context is one that insists on substantive equality of outcomes, specifically that

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women in all communities have access to equivalent protections in matters of marriage, divorce, and property rights, while remaining open to procedural pluralism about the means by which those outcomes are achieved. On this approach, a legal system in which Muslim women's divorce rights are governed by Islamic jurisprudential principles and Hindu women's divorce rights are governed by reformed Dayabhaga principles would be compatible with substantive equality if both sets of rules provide genuine and practically accessible divorce rights. But a system in which Muslim women have statutory divorce rights and Hindu women have none would not be compatible with substantive equality, regardless of how one distributes the formal legal rules between the two communities.

This analysis points toward a reform agenda that is not committed to a uniform civil code as such but is committed to ensuring that the personal law rules applicable to every community meet a common floor of protection for the rights of women and children. The floor should include the right of every woman to dissolve a marriage that has irrevocably broken down; the right of every woman to receive fair financial provision on the dissolution of marriage; the right of every child to be protected from marriage before a biologically and psychologically appropriate age; the right of every woman to inherit property from deceased family members on terms that respect her equal human dignity; and the right of every parent to custody arrangements for their children that prioritise the welfare of those children above all other considerations.

The specification and enforcement of such a floor of rights, consistent with but not identical across different religious personal law systems, is a more realistic and more politically achievable goal in the near term than the uniform civil code, and it would represent a major step toward the substantive equality that Bangladesh's Constitution promises all its citizens.

Section 95.2: The Role of Legal Scholarship in Personal Law Reform

The intimate connection between personal law reform and jurisprudential legitimacy gives legal scholarship in this area a significance that is unusual even by the standards of an intellectually demanding discipline. The reform of Muslim personal law requires legal scholars who are simultaneously competent in Islamic jurisprudence (usul al-fiqh and furu al-fiqh), in constitutional law, in comparative law (particularly the comparative experience of Muslim-majority countries), and in the sociology and anthropology of law. The reform of Hindu personal law requires scholars with comparable competence in Dharmashastra jurisprudence, in the historical sociology of caste and gender in Bengal, in the comparative experience of Hindu law reform in India and in the diaspora, and in constitutional and human rights law.

The institutional implications of this observation connect directly to the Bangladesh SJD program discussed in Part Eight of this commentary. The development of doctoral-level legal scholarship in the area of personal law, specifically scholarship that engages seriously with the jurisprudential traditions of the communities whose law is at issue while bringing to bear the full range of comparative, theoretical, and empirical tools that contemporary legal scholarship makes available, is one of the most important contributions that legal education can make to the reform agenda.

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Scholars like Taslima Mansoor, whose work on women and family law in Bangladesh has combined rigorous legal analysis with sophisticated engagement with the Islamic and Hindu jurisprudential traditions, and Shahnaz Huda, whose work on Hindu law in Bangladesh has provided essential documentation of the gender inequities in the Dayabhaga system and made the case for reform in jurisprudentially serious terms, represent the kind of scholarship that Bangladesh's legal education system needs to produce in greater quantity. Their work has been influential in shaping the reform debate, but it has been produced in conditions of institutional difficulty and without the kind of doctoral-level research infrastructure that would have allowed for greater sustained productivity and deeper comparative engagement.

The development of specialised journals for personal law scholarship, dedicated research centres within law schools and universities, collaborative research projects with scholars from comparable jurisdictions, and systematic engagement with the international literature on Islamic legal modernism, Hindu law reform, indigenous customary law, and comparative family law would collectively transform the intellectual resources available for the personal law reform debate. These are not luxuries; they are institutional necessities if Bangladesh is to develop the jurisprudential capacity to design and justify reforms that are both legally sound and practically effective.

CONCLUDING SYNTHESIS OF PART NINE: PERSONAL LAW, EQUALITY, AND THE UNFINISHED CONSTITUTION

The argument of Part Nine has moved through the historical foundations of Bangladesh's plural personal law system, the jurisprudential traditions that animate each of the major personal law systems, the constitutional tensions that the plural system creates, the international human rights obligations that Bangladesh has assumed, the comparative experience of Muslim-majority and other countries that have undertaken personal law reform, the specific content and political dynamics of the current reform moment, the role of informal dispute resolution mechanisms in the actual administration of personal law, the rights of children within the personal law framework, and the principles and specific proposals that should guide a reformed personal law system for Bangladesh. The analysis has been both diagnostic and normative, identifying what is wrong with the existing system and arguing for specific reforms grounded in the principles of human dignity, substantive equality, religious respect, jurisprudential legitimacy, and empirical realism.

The overall conclusion of this Part is that Bangladesh's personal law system represents, in its current form, one of the most significant areas in which the Constitution's promise to its citizens remains unfulfilled. The women and children whose most intimate life circumstances are governed by rules that deny them equal dignity, adequate protection, and genuine justice are not abstractions or statistics; they are the actual citizens of Bangladesh, and the failure to reform the system that governs them is a failure of the state's most fundamental obligation.

That failure is not, however, inevitable or permanent. The comparative analysis shows that personal law reform has been achieved in numerous jurisdictions, including jurisdictions facing

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religious and political obstacles that are no less formidable than Bangladesh's. The intellectual resources for reform, grounded in the reformist traditions within Islamic jurisprudence, in the developing understanding of Hindu law's progressive possibilities, and in the sophisticated international literature on comparative family law and human rights, are available and are being developed. The political will that is currently being expressed, however tentatively, through the Women's Reform Commission and other official bodies represents a moment of genuine opportunity.

Seizing that opportunity requires a combination of intellectual courage, political skill, and institutional investment. It requires scholars willing to engage seriously with the jurisprudential traditions they are seeking to reform rather than simply dismissing them. It requires politicians willing to make the case for reform in terms that respect religious identity while insisting on the equal human dignity of all citizens. It requires institutions, legal aid organisations, Family Courts, and the Arbitration Council structure, capable of implementing reform in ways that reach the women who most need it rather than simply changing the law on paper. And it requires ordinary citizens, both women and men, who understand that the reform of personal law is not an attack on their religious identity but a fulfilment of the constitutional promise that each of them, regardless of religion, race, sex, or community, is equal before the law.

The unfinished Constitution of Bangladesh waits for this work to be done. The history and jurisprudence examined in this Part demonstrate that it can be done. The political economy examined in these pages demonstrates how hard it will be. The intellectual tradition that this commentary seeks to develop and contribute to is one of the resources that can make the hard possible.

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END OF PART NINE

Part Ten will address transitional justice in Bangladesh, examining: the legacy of the Liberation War of 1971 and its ongoing significance for Bangladeshi legal and political culture; the International Crimes Tribunal Act 1973 and the establishment of the International Crimes Tribunal; the jurisprudence of the Tribunal and the controversies surrounding its proceedings, including international reactions to its procedural standards; the philosophical foundations of transitional justice including the debate between retributive and restorative approaches; the comparative experience of transitional justice mechanisms in South Africa, Rwanda, Cambodia, Argentina, and other countries; the ongoing challenges of truth, accountability, and reconciliation in Bangladesh's post-independence history; the political violence of 1975 and its aftermath; and the institutional conditions required for transitional justice processes to achieve their stated goals of accountability and reconciliation. Part Ten will engage extensively with the recent proceedings and controversies of the International Crimes Tribunal, the debate between universal jurisdiction principles and sovereignty concerns, the role of international criminal law in shaping domestic transitional justice frameworks, and the distinctive jurisprudential challenges that arise when a domestic tribunal applies international criminal law standards in the context of deeply contested national history.

This completes Part Nine of the twelve-part commentary. The Part runs to approximately 28,500 words and covers the full scope indicated at the end of Part Eight, including the historical development of Muslim personal law from the Mughal period through the 1961 Ordinance; the jurisprudential controversies surrounding the Ordinance; the proposed reforms to marriage, divorce, maintenance, custody, and inheritance law; Hindu personal law and the case for reform including women's property and divorce rights; the personal law of Christian, Buddhist, and indigenous communities; the constitutional tensions between personal law and equality; the international human rights framework; the comparative experience of Tunisia, Morocco, Indonesia, and Egypt; and the political economy of personal law reform in Bangladesh, drawing on the latest scholarship through early 2026.

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PART TEN: TRANSITIONAL JUSTICE, HISTORICAL MEMORY, AND THE UNFINISHED RECKONING WITH POLITICAL VIOLENCE IN BANGLADESH

PREFACE TO PART TEN

Bangladesh was born in blood and forged in grief. The Liberation War of 1971 was not merely a political event, a transfer of sovereignty from one state to another; it was one of the most devastating episodes of mass atrocity in the history of the twentieth century. The systematic campaign of killing, rape, forced displacement, and cultural destruction carried out by the Pakistan Army and their local collaborators between March and December 1971 killed hundreds of thousands of people, perhaps millions by some counts, destroyed the physical and social infrastructure of a nascent nation, and left wounds in the national consciousness that have not healed in more than five decades of independence. Understanding Bangladesh requires understanding 1971. Understanding Bangladesh's legal system requires understanding what 1971 did to the relationship between law, authority, violence, and justice in a society that had been subjected to state terror on an extraordinary scale.

But 1971 is not the only episode of mass violence that defines Bangladesh's transitional justice problem. The assassination of Sheikh Mujibur Rahman and most of his family on 15 August 1975, carried out by a group of military officers, was followed by a period of political repression, military rule, and counter-violence that left its own accumulation of unaccounted deaths, enforced disappearances, and institutional degradation. The subsequent decades of Bangladeshi political life were marked by cycles of political violence, electoral manipulation, and the systematic abuse of state institutions, including the courts and the security services, for political purposes. The International Crimes Tribunal, established in 2009 ostensibly to address the atrocities of 1971, became itself a site of political controversy and a vehicle for the elimination of political opponents under the guise of historical justice. And then, in the extraordinary events of July and August 2024, the student-led Monsoon Revolution that toppled Sheikh Hasina's government generated its own mass casualties, its own demands for accountability, and its own claim on the institutions and mechanisms of transitional justice.

Part Ten of this commentary addresses this entire landscape of historical violence, political accountability, and transitional justice in Bangladesh. It does so with three distinct but interrelated purposes. The first is descriptive and analytical: to give a clear, honest, and intellectually rigorous account of the events that require accountability, of the legal mechanisms that have been created or proposed to provide it, and of the controversies that have surrounded those mechanisms. The second is jurisprudential and philosophical: to examine the foundational questions about justice, memory, truth, and accountability that the Bangladesh situation raises with particular intensity, drawing on the rich theoretical literature on transitional justice that has developed over the past three decades. The third is normative and reform-oriented: to identify what a genuinely adequate transitional justice framework for Bangladesh would require, drawing on the comparative experience of other jurisdictions and on the specific institutional and political conditions of Bangladesh itself.

The difficulty of this task is compounded by the extraordinary complexity of the contemporary moment. As these words are written, in the early months of 2026, Bangladesh is in the

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immediate aftermath of its first genuinely competitive elections since 2008, following more than a year of interim governance under Muhammad Yunus. The International Crimes Tribunal, reconstituted in October 2024 under the Yunus government, has already convicted a former Prime Minister in absentia and sentenced her to death, generating international controversy about fair trial standards and the risk of political instrumentalisation of transitional justice mechanisms. The Awami League, the party of independence and of Sheikh Mujibur Rahman, has been banned from electoral participation. The Bangladesh Nationalist Party has returned to power following the February 2026 elections. The legacy of the Liberation War, which has been the defining narrative of Bangladeshi national identity for more than fifty years, is being actively contested and in some quarters actively dishonoured.

There is no comfortable vantage point from which to analyse this situation. Every position one takes on the events of 1971 and their relationship to the events of 2024 is politically charged. Every assessment of the ICT's proceedings is contested by partisans on multiple sides. Every normative claim about what justice requires in Bangladesh's specific circumstances will be challenged by those who have different views about what the facts were, what the law requires, and what the political interests of various communities demand. This Part does not pretend to a neutrality it cannot achieve, but it does aspire to an intellectual honesty that acknowledges complexity, takes evidence seriously, engages with opposing arguments on their merits, and refuses the tempting simplifications that political passion tends to produce on all sides.

CHAPTER NINETY-SIX: THE LIBERATION WAR OF 1971 AND THE QUESTION OF GENOCIDE

Section 96.1: The Historical Record and Its Contested Dimensions

The events of 1971 constitute the foundational trauma of Bangladeshi national identity, and any serious engagement with the country's transitional justice challenge must begin with a careful examination of what those events actually consisted of, how they have been documented, and how they have been interpreted by historians, lawyers, and political actors in the decades since.

The political conflict that culminated in the Liberation War was decades in the making. The partition of British India in 1947 created the new state of Pakistan as a geographically divided entity, with West Pakistan and East Pakistan separated by nearly two thousand kilometres of Indian territory. From the beginning, the political and economic relationship between the two wings was characterised by significant inequality: West Pakistan dominated the political institutions of the federal state despite East Pakistan's larger population, controlled the military and bureaucratic establishments disproportionately, and systematically extracted economic resources from the east while directing development investment to the west. The Bengali cultural identity of East Pakistan's population, its language, its literature, its music, its religious pluralism, was treated as a subordinate and suspect element within a state whose founding ideology was based on a particular understanding of Islamic solidarity that sat uneasily with the particularities of Bengali culture.

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The Awami League's overwhelming victory in the December 1970 general elections, in which Sheikh Mujibur Rahman's party won 167 of the 169 National Assembly seats allocated to East Pakistan, on a platform of the Six Points programme for Bengali autonomy, represented a legitimate democratic claim to political power that the Pakistani military government of General Yahya Khan was unwilling to honour. The decision by Yahya Khan and the People's Party leader Zulfikar Ali Bhutto to postpone the convening of the National Assembly and to resist the transfer of power to the Awami League set the conditions for the catastrophe that followed. On the night of 25 March 1971, the Pakistan Army launched Operation Searchlight, a systematic military campaign designed to crush the Bengali political and cultural leadership through targeted killing, mass terror, and the destruction of infrastructure.

The scale and character of the atrocities committed by the Pakistan Army and their local collaborators, including the Razakars, Al-Badr, and Al-Shams auxiliaries, in the nine months between March and December 1971 are documented in a substantial historical literature, including the accounts of journalists present at the time, the reports of diplomatic missions that witnessed the killing, the testimony of survivors collected by researchers in subsequent decades, and the records of international organisations that were operating in East Pakistan during the conflict. The documentary record, while not complete, is extensive and consistent in its broad outlines, even if specific factual questions remain contested.

The nature and extent of the sexual violence committed during the 1971 conflict deserves particular emphasis because it raises specific legal and moral questions that are directly relevant to the transitional justice framework. Historians have estimated that during the nine-month conflict between 200,000 and 400,000 women and children were raped, leading to an estimated 25,000 war babies being born. Wikipedia The systematic character of the sexual violence, its use as a deliberate instrument of terror and cultural destruction rather than merely as a by-product of military operations, has been documented by researchers including Susan Brownmiller and more recently by scholars working specifically on the Bangladesh case. The recognition of mass rape as a war crime and a crime against humanity, which in international law terms was not fully established until the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda in the 1990s, means that the 1971 atrocities must be understood in light of a legal framework that has evolved significantly since the events themselves.

The question of the death toll is one of the most contested aspects of the historical record. Bangladeshi official accounts and much of the political discourse in Bangladesh cite the figure of three million dead, a number that has become embedded in the national narrative and that is reinforced by the language of Article 19 of the Constitution of Bangladesh, which describes the Liberation War as the "supreme sacrifice" of millions. Independent historical research has generally produced lower estimates, ranging from several hundred thousand to over a million deaths, depending on the methodology used and the scope of violence counted. This discrepancy matters not for the purpose of minimising the horror of what occurred, which was catastrophic at any plausible estimate, but for the purposes of rigorous historical scholarship and for the legal determinations of scale and intent that are relevant to the definition of genocide under international law.

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The legal question of whether the 1971 events constitute genocide in the specific technical sense of the Genocide Convention of 1948, namely the intentional destruction in whole or in part of a national, ethnical, racial, or religious group as such, is both legally significant and politically charged. The challenge for the genocide characterisation is that the victims of 1971 were targeted both as members of the Bengali ethnic and linguistic community and as political opponents of the Pakistani state, and the Genocide Convention does not protect political groups. The jurisprudence of the international criminal tribunals has developed sophisticated analyses of the intersection of ethnic and political targeting in the context of genocide, and the ICT in Bangladesh has addressed the genocide question in several of its 1971-related judgments, but the legal analysis has been contested by international scholars who argue that the tribunal's legal reasoning has not always met the standards required for a genocide finding under international law.

Section 96.2: The Historical Roles of the Collaborating Forces and Their Aftermath

The domestic political dimension of the 1971 conflict, the role played by Bengali political and religious organisations that actively assisted the Pakistani military in identifying and killing liberation fighters, Bengali intellectuals, and members of the Hindu minority, is central to understanding the subsequent history of transitional justice in Bangladesh and to evaluating the proceedings of the ICT.

The Jamaat-e-Islami, the major Islamist political party, was the principal political organisation that opposed the liberation movement and actively collaborated with the Pakistan Army. The Jamaat's leaders in 1971, including Ghulam Azam who was the party's chief in East Pakistan, publicly supported Pakistani military action against what they characterised as a secessionist movement inspired by Indian and Hindu influences. Many Jamaat members participated in the auxiliary forces that assisted the Pakistani military in identifying liberation sympathisers, carrying out killings of intellectuals and professionals in the final days before Pakistan's surrender, and committing crimes against the Hindu minority population that formed a disproportionately large share of the exodus to India.

The trajectory of these leaders and their organisation in post-1971 Bangladesh is a story of remarkable political rehabilitation that has no clear parallel in the comparative transitional justice literature. Ghulam Azam, who had been stripped of Bangladeshi citizenship after independence and spent years in exile in Pakistan, was allowed to return to Bangladesh in 1978 under the government of General Ziaur Rahman, who saw the Islamist parties as a useful counter-balance to the Awami League's political dominance. The rehabilitation of Jamaat-e-Islami as a legitimate political party, and its eventual role as a coalition partner in governments led by the Bangladesh Nationalist Party, represented a profound failure of the transitional justice imperative in the decades immediately following independence. Ghulam Azam lived in Bangladesh until his death in 2014, spending the last two years of his life facing charges before the ICT.

The 15 December 1971 massacre of intellectuals, in which Jamaat-affiliated groups systematically killed professors, journalists, doctors, engineers, and other professionals in Dhaka in the final days before Pakistan's surrender, deserves particular attention both as a specific crime requiring accountability and as a symbol of the cultural dimension of the atrocities. The killing of

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intellectuals was not random; it was targeted and purposive, designed to deprive the new nation of the educated class it would need to function, representing what might be characterised as an attempt at cultural genocide even if the strictly legal definition of genocide proves difficult to satisfy. The Martyred Intellectuals Day, observed on 14 December each year in Bangladesh, commemorates this specific atrocity and maintains its memory as a central element of national mourning and identity.

The failure of the immediate post-independence government of Sheikh Mujibur Rahman to successfully prosecute the collaborators of 1971 is one of the defining political failures of Bangladesh's early history and a direct cause of the subsequent complications in the transitional justice landscape. The Bangladesh Collaborators (Special Tribunals) Order of 1972 established special tribunals to prosecute those who had collaborated with the Pakistan Army, and thousands of persons were arrested under it. But the political process was interrupted by the general amnesty extended under the Prime Minister's declaration in 1973, which released most of those detained and effectively halted the prosecution process. The reasons for this premature closure of the accountability process are contested: some historians attribute it to political calculations about national reconciliation, others to the practical difficulties of large-scale prosecutions without adequate evidence collection or institutional capacity, and others to foreign policy considerations involving the recognition of Pakistan and the normalisation of bilateral relations.

The consequences of this failure of early accountability were severe and lasting. The persons who had most actively collaborated in the 1971 atrocities were not prosecuted, were not excluded from public life, and in many cases went on to positions of political and economic influence in the state they had sought to prevent from coming into existence. The message this sent about the relationship between mass atrocity and impunity, about the willingness of the state to enforce its own founding principles of accountability and justice, was deeply corrosive. And the unresolved legacy of 1971 became a perennial source of political conflict in Bangladesh, weaponised by different political actors across different periods to delegitimise opponents and to make the politics of memory serve the politics of power.

CHAPTER NINETY-SEVEN: THE INTERNATIONAL CRIMES (TRIBUNALS) ACT 1973 AND ITS HISTORICAL CONTEXT

Section 97.1: The Legislative Architecture of 1973 and Its Jurisprudential Significance

The International Crimes (Tribunals) Act of 1973 occupies a unique position in the history of international criminal law. It was enacted by the newly independent Bangladesh to provide the legal framework for the prosecution of those responsible for atrocities committed during the Liberation War, and it was one of the first pieces of domestic legislation specifically designed to criminalise conduct that would now be described as international crimes, predating the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) by twenty years and the Rome Statute of the International Criminal Court by twenty-five years. As a piece of legal draftsmanship responding to an urgent post-conflict accountability need, it has significant historical interest. As a framework for fair trial, however, it has been consistently criticised by

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international human rights organisations and legal scholars for failing to meet the standards of due process that are required for proceedings involving charges carrying the death penalty.

The 1973 Act defined the jurisdiction of the special tribunals to cover genocide, crimes against humanity, war crimes, and violations of customary international law committed in Bangladesh during the Liberation War. These definitions, developed at a time before the modern systematisation of international criminal law in the Rome Statute, were formulated with reference to the Nuremberg Charter and the definitions that the post-World War II tribunals had applied, supplemented by the framers' understanding of the relevant customary international law. The resulting definitions were not identical to those that have since been elaborated in the Rome Statute and the jurisprudence of the ad hoc tribunals, and this divergence has been a source of significant legal controversy in the subsequent proceedings.

The procedural provisions of the 1973 Act are the most problematic from the perspective of international fair trial standards. The Act and subsequent rules made under it contain provisions that depart significantly from the standards established in the ICCPR and in the rules of procedure of the international criminal tribunals. The most significant departures include: the tribunal's authority to apply rules of evidence more flexibly than general rules applicable to civil or criminal proceedings in Bangladesh, with the result that hearsay evidence and other forms of evidence that would ordinarily be inadmissible have been accepted; the limitation on the accused's right of appeal in ways that diverge from the requirements of Article 14 of the ICCPR; and the provision for trial in absentia without the comprehensive safeguards that international law requires for such proceedings.

The 1973 Act was amended several times after its initial enactment. The 2009 amendment, made by the Awami League government as it prepared to establish the tribunal, was the most significant prior to 2024. It updated certain definitions and procedural provisions to bring them closer to the Rome Statute framework, but it retained many of the features that had drawn criticism in the original Act. The amendment also contained a provision that was constitutionally significant: it provided that no law enacted by Parliament relating to the ICT could be challenged before any court on the ground that it was inconsistent with the fundamental rights provisions of the Constitution. This ouster clause, which attempted to place the ICT Act beyond constitutional challenge, reflected both the political determination of the Awami League government to proceed with the trials without legal obstruction and the broader pattern of constitutional entrenchment that has characterised the treatment of the 1971 legacy in Bangladesh's constitutional framework.

The constitutional status of the ICT Act, and of the immunity clause that sought to protect it from constitutional challenge, raises fundamental questions about the relationship between ordinary constitutional law and the special legal treatment of historical atrocity. The incorporation of the Seventh Schedule to the Constitution, which validated the proclamations and orders of the post-independence period including the Bangladesh Collaborators Order of 1972, represented a constitutional decision to give special protection to the legislative responses to the atrocities of 1971 that could not easily be challenged on ordinary constitutional grounds. Whether this special constitutional treatment of historical accountability legislation was appropriate, or whether it created an impermissible exception to the rule of law by immunising certain proceedings from

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the safeguards that the Constitution would otherwise require, is a question that goes to the heart of how constitutional democracies should deal with the legacy of mass atrocity.

Section 97.2: The Establishment of the Tribunal in 2009 and Its First Phase

The formal establishment of the International Crimes Tribunal in 2010, following the Awami League's electoral victory in December 2008 on a platform that explicitly included the prosecution of 1971 war criminals, represented the most sustained effort at transitional justice that Bangladesh had attempted since the abortive early post-independence proceedings. The Awami League's commitment to the tribunal was a central element of its political programme and its understanding of the unfinished business of national independence. For a party and a leadership whose founding identity was inseparable from the Liberation War and whose political patriarch had been murdered by those who sought to reverse independence's achievements, the prosecution of the collaborators was simultaneously a moral obligation, a political imperative, and a project of national memory and identity.

The first years of the tribunal's operation, from 2010 to 2013, were characterised by the proceedings against the senior leaders of Jamaat-e-Islami and two leaders of the Bangladesh Nationalist Party who had been identified as significant collaborators in 1971. The defendants included some of the most prominent figures in Bangladesh's post-independence political history: Ghulam Azam, the former Jamaat chief; Matiur Rahman Nizami, the party's then-current leader; Delwar Hossain Sayeedi, a nationally famous preacher and Jamaat deputy; Ali Ahsan Mohammad Mojahid, Jamaat's secretary general; and others. The proceedings attracted enormous domestic attention and generated intense controversy, both about the specific findings in individual cases and about the broader procedural and institutional framework within which the trials were conducted.

The Skype scandal of 2012 is the most damaging single episode in the tribunal's institutional history and warrants detailed examination because of what it reveals about the limits of judicial independence in a politically charged transitional justice process. The revelation by the Wall Street Journal, based on hacked Skype conversations and emails, that Justice Nizamul Huq, the tribunal's chairman, had been in extensive and substantively significant communication with a Belgian-based Bangladeshi legal academic, Dr. Ahmed Ziauddin, about the ongoing proceedings was deeply troubling. According to the Wall Street Journal, the emails and Skype calls showed that Ziauddin was playing an important part in the proceedings, although he had no legal standing. The communications suggested that the Bangladeshi government was trying to secure a quick verdict, as the judge referred to pressure from a government official. Wikipedia Justice Huq resigned following the publication of these revelations, and his resignation generated a crisis about the integrity of the proceedings that was never fully resolved.

The revelations raised fundamental questions about the independence of the tribunal from political influence. Ex parte communications between a judge and a person who is not a party to the proceedings, particularly communications that appear to involve discussion of the substantive merits of pending cases, are a serious violation of the basic requirement of judicial impartiality that is central to the right to a fair trial under international law. The fact that these communications apparently included pressure from government officials raises the additional

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concern that the executive branch was seeking to influence judicial outcomes, which would be a fundamental violation of the separation of powers. The argument that the hacking of judicial communications was itself a criminal act, and that the revelations should therefore not be taken at face value, was made by the government but did not address the substance of what the communications revealed.

Human Rights Watch and defence lawyers acting for Ghulam Azam and Delwar Hossain Sayeedi requested retrials for the two because of the controversy during their trials. Brad Adams of Human Rights Watch expressed concern that, because of changes among all the judges in the course of the trial, none of the three judges in Sayeedi's case would have heard all the evidence. Wikipedia These concerns were not adequately addressed, and the proceedings continued, eventually producing convictions and death sentences in several cases.

Section 97.3: The Shahbag Protests and the Retroactive Enhancement of Sentences

The episode of the Shahbag protests and their consequences for the ICT proceedings represents one of the most troubling moments in the history of the tribunal and in the history of Bangladesh's transitional justice effort. Abdul Quader Molla, the Assistant Secretary General of Jamaat-e-Islami, was convicted by the tribunal in February 2013 and sentenced to life imprisonment. In February 2013, Abdul Quader Molla was the first person sentenced to life imprisonment by the ICT who was not convicted in absentia. Following the Shahbag protests, in which demonstrators at Dhaka's Shahbag intersection called for the death penalty for Molla and any others convicted of war crimes, the Supreme Court in September 2013 overturned his life sentence and imposed the death penalty. He was executed on 12 December 2013, the first person to be put to death for events in 1971. Wikipedia

The legal process by which Molla's sentence was enhanced from life imprisonment to death deserves careful examination, because it raises fundamental questions about the relationship between democratic pressure and judicial independence. The amendment to the ICT Act that allowed the prosecution to appeal against sentences it considered inadequate, specifically enacted to enable the government to respond to the Shahbag demonstrators' demands, was applied to a case that had already been decided at the time of the amendment's enactment. The retroactive application of a legislative amendment to enhance a criminal sentence, while there is a limited international precedent for prosecution appeals against inadequate sentences in international criminal proceedings, raises serious concerns about the principle of legality (nullum crimen, nulla poena sine lege) and about the prohibition of laws that increase the punishment for an offence after the offence was committed.

The broader question raised by the Shahbag episode is the relationship between popular democratic pressure and the integrity of judicial proceedings in transitional justice cases. Transitional justice proceedings are, by their nature, politically charged; they address crimes that are central to national identity, political conflict, and the claims of different social groups on the post-conflict state. The risk that popular pressure will distort the outcomes of those proceedings is therefore inherent rather than incidental, and the design of transitional justice institutions must include features that insulate the judicial process from inappropriate political influence without rendering the institutions so remote from democratic accountability that they lose popular

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legitimacy. The Shahbag episode illustrates the failure to achieve this balance in Bangladesh's case, with consequences that have undermined the international credibility of the tribunal's subsequent proceedings.

CHAPTER NINETY-EIGHT: THE PHILOSOPHICAL FOUNDATIONS OF TRANSITIONAL JUSTICE

Section 98.1: The Major Theoretical Frameworks

The field of transitional justice, understood as the set of legal and extra-legal mechanisms through which societies attempt to reckon with legacies of mass atrocity and systematic human rights violations, has developed a sophisticated theoretical literature over the past three decades that provides essential conceptual resources for the analysis of the Bangladesh situation. This literature encompasses competing philosophical frameworks for understanding the purposes of justice in the aftermath of mass atrocity, the relationship between justice and truth, the question of whether prosecutions are always necessary or whether alternative mechanisms may better serve the goals that transitional justice is meant to achieve, and the institutional conditions under which different transitional justice mechanisms are likely to succeed or fail.

The most fundamental theoretical divide in the transitional justice literature is between retributive and restorative approaches. Retributive justice, grounded in the philosophical tradition associated with Kant's arguments about punishment and with the classical legal tradition's understanding of criminal law, holds that those who have committed serious wrongs deserve to be punished regardless of whether the punishment produces good consequences, and that the failure to punish serious wrongdoers represents a moral deficit that violates the equal dignity of victims. On this view, the prosecution of those responsible for the 1971 atrocities is morally required as a matter of justice to the victims, not merely instrumentally valuable as a means of achieving other social goods.

Restorative justice, by contrast, focuses on the repair of damaged relationships, the acknowledgment of harm, and the healing of communities rather than on the punishment of individual wrongdoers. Drawing on indigenous justice traditions, on the work of scholars like Howard Zehr and John Braithwaite, and on the experience of mechanisms like victim-offender mediation and community service, the restorative approach asks how the harm caused by serious wrongdoing can be repaired rather than how the wrongdoer can be appropriately punished. Applied to the macro-level context of transitional justice, restorative principles have been associated with mechanisms like truth commissions, public acknowledgment of past wrongs, reparations programmes, and the rehabilitation of survivors.

The South African Truth and Reconciliation Commission, discussed in detail in Section 98.3 below, represents the most ambitious and most studied attempt to implement a primarily restorative approach at the national scale in a transitional justice context. Its relative success, and the ongoing debates about what it achieved and what it failed to achieve, has been central to the development of transitional justice theory over the past three decades.

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A third theoretical framework, associated in different ways with scholars like Hannah Arendt, Mahmood Mamdani, and Jon Elster, focuses on the political conditions of transitional justice and argues that the design of transitional justice mechanisms must be sensitive to the specific political circumstances of each case rather than applying a universal theoretical template. Arendt's analysis of the Eichmann trial in Jerusalem, which raised fundamental questions about whether ordinary criminal trial processes were adequate to the task of judging the extraordinary crimes of the Holocaust, remains one of the most searching philosophical engagements with the limits of legalistic approaches to mass atrocity. Her concept of the banality of evil, the disturbing insight that ordinary human beings can participate in extraordinary crimes through a combination of ideological conformity and the suspension of independent moral judgment, has profound implications for how we should understand both the perpetrators of atrocity and the appropriate institutional responses to their conduct.

Mamdani's distinction between survivors and beneficiaries in the South African context, developed in his controversial 1996 work Citizen and Subject and his more directly transitional justice-focused writings, raises a question that is equally relevant to Bangladesh: when the benefits of unjust systems, or in Bangladesh's case the post-independence structures that emerged from the suppression of accountability for 1971, have been widely distributed through the society, who bears the responsibility for addressing the injustice, and how should the costs of transitional justice be distributed? This question is particularly acute in Bangladesh because the suppression of accountability for 1971 and the rehabilitation of the Razakars and their political affiliates was not a random or accidental process; it was the deliberate political choice of specific governments, particularly those of General Ziaur Rahman and General Hussain Muhammad Ershad, that sought to build political coalitions that included the beneficiaries of the collaborationist forces.

Jon Elster's magisterial comparative study Closing the Books: Transitional Justice in Historical Perspective, published in 2004, analysed transitional justice mechanisms across dozens of historical cases and argued for a primarily empirical approach to the question of what mechanisms are likely to succeed in different circumstances, rather than a dogmatic commitment to either the prosecution model or any alternative. Elster's findings about the importance of timing, political context, institutional capacity, and the distribution of power in determining the outcomes of transitional justice processes are directly relevant to the Bangladesh case.

Section 98.2: The Truth Commission Alternative and Bangladesh's Failure to Pursue It

The most consequential institutional choice in Bangladesh's transitional justice history is the choice not to create a truth commission. Among the five pillars of transitional justice that the United Nations Secretary-General identified in his 2004 report on the rule of law and transitional justice in conflict and post-conflict societies, including prosecution of perpetrators, truth-seeking, reparations, institutional reform, and national consultations, Bangladesh's transitional justice framework has focused almost exclusively on prosecutions. Bangladesh mainly deals with prosecution initiatives and lacks the other four UN-proposed pillars of transitional justice: the right to truth, delivering reparations, institutional reform, and national consultations. To improve and ensure accountability for the 1971 War and deal with human rights violations, the

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Bangladesh government needs to focus on introducing transitional justice mechanisms by adopting all five pillars proposed by the UN. Euclid

The argument for a truth commission in Bangladesh does not rest on the view that prosecutions should be abandoned or that those responsible for the most serious atrocities should escape individual accountability. It rests on the recognition that prosecutions alone are inadequate to achieve the full range of goals that transitional justice is meant to serve. The prosecution of a handful of Jamaat leaders, however justified in principle, cannot by itself address the historical narrative of what happened in 1971, establish a comprehensive record of responsibility that goes beyond the specific cases before the tribunal, provide acknowledgment and some measure of reparative justice to the hundreds of thousands of survivors and their descendants who were not involved in the cases actually prosecuted, or create the conditions for a national reckoning with the 1971 legacy that is inclusive enough to generate genuine social closure.

The South African Truth and Reconciliation Commission (TRC) offered those who confessed their full knowledge of politically motivated crimes committed under apartheid conditional amnesty from prosecution. This mechanism, which was deeply controversial within South Africa and remains a subject of fierce debate in the academic literature, was premised on the empirical judgment that full prosecutions were not practically achievable given the political balance of forces in 1994, and that the most achievable and most valuable outcome was a comprehensive public record of what had occurred, accompanied by individual accountability through the naming and shaming of perpetrators and collective accountability through the public acknowledgment of institutional responsibility for systematic human rights violations. The South African experience demonstrates both the potential and the limitations of the truth commission approach: the TRC produced an extraordinarily detailed public record of the apartheid system's crimes, created space for some survivors to tell their stories and be heard, and contributed to the delegitimisation of the apartheid system and its beneficiaries. But it also fell far short of delivering the reparations it promised, failed to achieve prosecutions against any but a handful of the most serious offenders, and left many victims feeling that justice had been subordinated to political accommodation.

The Bangladeshi situation shares some features with the South African one and differs in important respects. The crimes of 1971 occurred more than fifty years ago; the principal perpetrators are mostly dead, and many of those who were tried by the ICT were elderly men whose conviction and execution, while morally justified from a retributive perspective, could not undo the decades of impunity they had enjoyed or address the structural conditions that had allowed them to flourish politically. A truth commission, established even now, could contribute to the historical record in ways that transcend the specific cases prosecuted; it could provide a forum for survivors and their families to have their experiences acknowledged; and it could create a basis for a broader social understanding of the 1971 events that is more inclusive, more nuanced, and more durable than the politically contested narrative that the prosecutions alone have produced.

Section 98.3: Retributive Justice and the Logic of International Criminal Law

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The turn to international criminal law as the primary framework for transitional justice proceedings, which began with the Nuremberg and Tokyo tribunals after World War II and was institutionalised through the ICTY, ICTR, and the ICC, rests on a philosophical foundation that combines retributive, deterrent, and expressive arguments for criminal punishment. The expressive theory of international criminal law, most fully developed by scholars like Mark Drumbl and Margaret deGuzman, holds that international criminal proceedings serve the important function of publicly affirming the norms of international humanitarian law by denouncing their violation in the most solemn institutional forum available. On this view, the trial of those responsible for mass atrocity is not merely an attempt to punish wrongdoers or to deter future violations but an act of collective moral proclamation: this conduct violates the most fundamental norms of our shared humanity, and those who engage in it will be held to account.

The retributive argument for international criminal prosecutions, which holds that those who have committed the most serious crimes against humanity deserve to be punished regardless of the instrumental consequences of the punishment, is also philosophically significant. The Kantian principle that rational agents who treat other rational agents as mere means to their ends violate the categorical imperative and deserve punishment as a matter of justice and not merely as a matter of social utility has been applied to the analysis of international crimes by philosophers including Alan Gewirth and more recently by Claire Finkelstein. The application of this principle to the specific context of mass atrocity is complicated by the fact that mass atrocities are typically perpetrated within systems of authority and ideology that create complex distributions of moral responsibility across many actors at many levels of the organisational hierarchy, making it difficult to attribute the distinctive culpability required for retributive punishment to any individual except those at the very top of the command structure.

The development of the doctrine of command responsibility in international criminal law represents the legal response to this problem of distributed responsibility in mass atrocity. The doctrine holds that commanders bear criminal responsibility for the crimes of their subordinates when they knew or should have known that the crimes were being committed and failed to prevent or punish them. The Rome Statute's formulation of command responsibility in Article 28, which distinguishes between military commanders and civilian superiors and applies different standards of knowledge and duty to each, represents the most carefully elaborated version of this doctrine currently in force. The Yunus government amended the International Crimes (Tribunals) Act in November 2024 to bring provisions on command responsibility and crimes against humanity closer to the ICC's Rome Statute. The amendments specifically list enforced disappearances as a crime. Human Rights Watch This harmonisation with the Rome Statute framework represents an important improvement in the legal architecture of the ICT, though it does not address all of the procedural concerns that international observers have raised about the tribunal's proceedings.

CHAPTER NINETY-NINE: THE 2024 MONSOON REVOLUTION AND THE RECONSTITUTION OF THE ICT

Section 99.1: The July-August 2024 Uprising and Its Legal Dimensions

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The extraordinary events of July and August 2024, in which a student-led protest movement that began as a demand for reform of civil service job quotas transformed within weeks into a mass uprising that forced the resignation and exile of Sheikh Hasina after fifteen years as Prime Minister, represent the most significant political transition in Bangladesh's history since the restoration of democracy in 1990. Understanding these events, and the legal questions they generate, is essential for any analysis of the contemporary transitional justice landscape.

The immediate trigger for the protests was the Supreme Court's June 2024 decision to revive the quota system for descendants of 1971 freedom fighters in civil service recruitment, a system that had been abolished following earlier protests in 2018. The trigger for the movement that led to Hasina's downfall was the Supreme Court's decision in June 2024 to revive job quotas for the descendants of freedom fighters in the country's 1971 liberation war, an initiative widely seen as favouring supporters of her party, the Awami League. Hasina first tried to crush the protests denouncing this measure, but her regime's violence only spurred more anger, turning the demonstrations into a mass movement demanding the government's resignation. Crisis Group

What began as a focused legal and policy grievance about the quota system escalated rapidly, driven by the government's response to the initial protests, which involved the deployment of security forces and Awami League-affiliated student organisations against the demonstrators with lethal effect. The killing of protesters by police and by the Bangladesh Chatra League, the Awami League's student wing, generated precisely the dynamic that transitional justice theory predicts: rather than suppressing dissent, state violence against peaceful protesters delegitimises the regime, energises the broader opposition, and creates the conditions for a much larger challenge to political authority. By July 2024, the protests had spread from Dhaka University to campuses across the country and had taken on the character of a general popular uprising against a government that was perceived as authoritarian, corrupt, and detached from the interests of ordinary citizens.

The scale of the violence employed by the state against the protesters was extraordinary even by the standards of Bangladesh's history of political repression. The killings of demonstrators by security forces started on 16 July 2024, when six protesters were shot dead by the police, and ended on 5 August, shortly after Hasina fled the country. The interim government requested the United Nations Office of the High Commissioner for Human Rights to undertake a fact-finding mission into human rights violations and abuses that occurred between 1 July and 15 August 2024. Justice Info The UN fact-finding mission's subsequent report, published in February 2025, documented a pattern of violence that it characterised as brutal and systematic repression amounting to possible crimes against humanity.

The specific allegations against Sheikh Hasina and her senior officials include: ordering security forces to use lethal force against unarmed protesters; using drones and helicopters to fire on civilian crowds; ordering the killing of specific prominent protest leaders including Abu Sayed; directing the incineration of bodies in Ashulia to destroy evidence of killings; and the coordinated killing of demonstrators at specific locations in Dhaka. The tribunal examined fourteen volumes of documents spanning about 10,000 pages, including official reports, medical and postmortem records, ballistics data, flight logs, and media footage; 93 documentary exhibits and 32 physical exhibits such as ammunition, clothing, recordings, and field reports; and

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testimony from more than 80 witnesses including survivors, doctors, organisers, and investigators, with 54 testifying in court. Wikipedia The volume and variety of the evidence presented to the tribunal is significant, though the question of whether the evidence was subjected to adequate scrutiny within proceedings that met international fair trial standards is a separate matter.

Section 99.2: The Reconstituted ICT and the November 2025 Verdict

Following Sheikh Hasina's resignation as Prime Minister, the newly formed interim government of Bangladesh reconstituted the tribunal in 2024, appointing six judges to Tribunal-1 and Tribunal-2 to prosecute those identified as masterminds of the July massacre. Former Prime Minister Sheikh Hasina is also facing charges in the International Crimes Tribunal of Bangladesh, including allegations of genocide and crimes against humanity during mass protests in July and August 2024. Wikipedia

The reconstitution of the ICT to address crimes committed during the Monsoon Revolution represents a dramatic transformation in the institution's mandate and a jarring institutional development that raises profound questions about the appropriate scope of a tribunal originally designed to address crimes committed more than fifty years ago. The decision to use the same institution, operating under the same statutory framework (as amended), to prosecute crimes committed in 2024 as those committed in 1971 reflects a political judgment that the ICT framework, modified to approach Rome Statute standards, provides the most expedient vehicle for accountability proceedings. Whether it provides the most appropriate vehicle is a different question, and one that has not been adequately debated in public.

On 17 November 2025, the ICT found Sheikh Hasina guilty on three of the five charges of preventing justice, ordering killings, and failing to take measures to stop punitive killings. The verdict was read by Justice Golam Mortuza Mozumder and noted that the accused Prime Minister Sheikh Hasina committed crimes against humanity by her incitement order and also by failure to take preventive and punitive measures under charge 1, and committed one count of crimes against humanity by her order to use drones, helicopters, and lethal weapons under charge number 2. Wikipedia

The November 2025 verdict has generated an international response that reflects the deep divisions about the legitimacy of the proceedings. The International Crimes Tribunal of Bangladesh found Sheikh Hasina guilty of crimes against humanity and sentenced her to death. Both she and the former Home Minister were prosecuted in absentia, not represented by counsel of their choosing, and sentenced to death, raising serious human rights concerns. Human Rights Watch The UN Human Rights Office stated that the handing down of verdicts was an important moment for victims of the grave violations committed during the suppression of protests, while also consistently advocating for all accountability proceedings, especially on charges of international crimes, to unquestionably meet international standards of due process and fair trial. OHCHR

The trial in absentia dimension of the Hasina proceedings deserves particular jurisprudential attention. Trial in absentia, the prosecution of an accused person who is not present in court and

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is not represented by counsel of their own choosing, is a practice that is accepted in some legal systems but is deeply controversial from the perspective of international human rights law. The ICCPR requires that the accused in any criminal proceeding have the right to be tried in their presence and to defend themselves in person or through legal assistance of their choosing. The Rome Statute of the ICC does not permit trial in absentia at all, on the ground that the presence of the accused is a fundamental requirement of a fair trial. The Bangladesh ICT framework, as amended in 2024, does permit trial in absentia, but in a manner that the international community criticised for falling short of required protections, including unequivocal notice, effective representation, and a genuine right to a retrial upon surrender. The ICT cases have historically been criticised for overreliance on hearsay evidence and inconsistent application of procedural rules. The Diplomat

The representation issue is particularly troubling. In the Hasina proceedings, the defendants who were tried in absentia were represented by court-appointed counsel rather than by lawyers of their own choosing. Defendants Sheikh Hasina and Asaduzzaman Khan Kamal were both tried in absentia and were represented by court-appointed attorney Amir Hossain. Al Jazeera The adequacy of court-appointed representation in proceedings of this gravity, where the defendants are accused of crimes against humanity and face the death penalty, is questionable at best. The right to adequate legal representation, which is a fundamental component of the right to a fair trial, requires not merely the formal appointment of a lawyer but the genuine opportunity for effective representation, which in turn requires that the lawyer have access to the accused, adequate time and resources to prepare a defence, and the ability to challenge the prosecution's evidence through cross-examination and the presentation of contrary evidence. None of these conditions can be adequately satisfied in proceedings where the accused are absent and where the court-appointed lawyer has no instructions from the client.

Section 99.3: Institutional Transformation and the Expanded Mandate

Once focused solely on prosecuting atrocities from Bangladesh's 1971 Liberation War, the International Crimes Tribunal now finds itself at the centre of a legal and political transformation. Triggered by mass protests and government repression in mid-2024, sweeping amendments to its founding law have dramatically expanded the tribunal's mandate. As it begins prosecuting recent acts of political violence, the ICT-BD raises critical questions about justice, legitimacy, and the future of the rule of law in Bangladesh. Ghrd

The expansion of the ICT's mandate to cover crimes committed during the Monsoon Revolution represents a development that has no clear precedent in the comparative transitional justice literature. The institution was originally created for a specific historical purpose, the prosecution of those who collaborated with the Pakistan Army in 1971, and it carried the moral authority associated with that specific mandate. The use of the same institution, with its already-contested history, to prosecute political leaders of a government that fell in 2024 creates a complex institutional situation in which the credibility accumulated through one set of proceedings (to the extent that any was accumulated) is both drawn on and potentially undermined by the new mandate.

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Further amendments in 2025 gave the tribunal broad authority to prosecute and dismantle political organisations, which could be used to violate international standards of due process and freedom of association. Human Rights Watch The authority to ban political parties through the transitional justice process, rather than through ordinary electoral and constitutional processes, represents a particularly troubling expansion of the tribunal's powers. The banning of the Awami League from electoral participation, followed by its formal deregistration by the Election Commission, represents an extraordinary intervention in Bangladesh's political landscape whose long-term consequences for democratic pluralism are deeply uncertain.

The concern about the political instrumentalisation of the tribunal is not a partisan defence of the Awami League. Questions remain about whether the ICT, which was established for trials of the 1971 war criminals, could be used as a political tool against the previous regime. The quasi-legal ICT, since its operationalisation during Sheikh Hasina's post-2008 tenure, had been criticised for being a platform for settling political scores. The interim government's decision to expand the tribunal's mandate will serve to reinforce this practice. The Diplomat The Awami League itself had used the ICT instrumentally against its political opponents, deploying the accusation of 1971 collaboration to delegitimise Jamaat and weaken its coalition partner the BNP. The reconstituted tribunal under the Yunus government is making its own version of the same error, deploying the transitional justice framework as a tool for the political exclusion of the previous governing party rather than as a genuine instrument of justice.

The appointment of Muhammad Tajul Islam as Chief Prosecutor of the reconstituted tribunal deserves particular notice. This appointment was criticised by some as Tajul Islam was a senior defence lawyer for Jamaat-e-Islami in the previous trials at the tribunal, but he insists he will carry out his work independently. Justice Info The fact that the chief prosecutor in the proceedings against Sheikh Hasina and her Awami League government is a person who built his career defending the very Jamaat leaders whom the Awami League's ICT had prosecuted creates a perception of political reversal that fundamentally undermines the appearance of impartiality that any legitimate tribunal must project.

CHAPTER ONE HUNDRED: POLITICAL VIOLENCE ACROSS MULTIPLE PERIODS AND THE DEMAND FOR COMPREHENSIVE ACCOUNTABILITY

Section 100.1: The August 1975 Coup and Its Enduring Legal Legacy

The assassination of Sheikh Mujibur Rahman on 15 August 1975, together with the killing of most of his family members including his wife Fazilatunnessa Mujib and his young son Sheikh Russel, was carried out by a group of army officers whose motivations combined personal grievances, political ambition, and opposition to what they characterised as the authoritarianism of the BAKSAL system that Mujib had established in January 1975. The assassination was followed within months by counter-coups, further political killings, and the consolidation of military rule that would last, in various forms, for the next fifteen years.

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The legal aftermath of the 1975 assassination is one of the most illuminating case studies in the failure of transitional justice in Bangladesh's history. The Indemnity Ordinance promulgated in 1975 by the government that had come to power following the coup provided legal immunity to the perpetrators of the assassination, preventing any prosecution for the killing of Bangladesh's founding father and his family. This Ordinance, which was later incorporated into the Constitution as the Fifth Amendment, remained in force for more than two decades and represented a direct constitutional legitimation of political murder.

The constitutional challenge to the Fifth Amendment and the eventual prosecution of the killers of Sheikh Mujibur Rahman represents the one significant success story in Bangladesh's otherwise deeply troubled transitional justice history. The Appellate Division of the Supreme Court, in the landmark judgment on the Fifth Amendment in 2011, declared the amendment unconstitutional on the ground that it had been made by a government that came to power through an unconstitutional coup and therefore lacked the legitimate authority to amend the fundamental law. The removal of the Indemnity Ordinance's constitutional protection opened the way for the prosecution of the 1975 killers, some of whom were eventually tried, convicted, and executed, though several remain at large having fled abroad.

The Fifth Amendment litigation and its resolution through the Supreme Court judgment is significant for several reasons. It demonstrates that constitutional adjudication can, in appropriate circumstances, address the institutional legacies of political violence and remove the legal obstacles to accountability that earlier political settlements had constructed. It demonstrates the importance of judicial independence to the transitional justice project: a court that was not willing to declare the unconstitutional origins of the Fifth Amendment would have been unable to remove the immunity it provided. And it demonstrates the long time horizons over which transitional justice processes must sometimes operate: the killers of August 1975 were finally brought to account more than three decades after the crime.

The jurisprudence developed in the Fifth Amendment case has broader implications for Bangladesh's constitutional law that go beyond the specific question of accountability for the 1975 assassination. The court's assertion that constitutional amendments made by governments that came to power through unconstitutional means lack legal validity, and that the original constitutional values of the 1972 Constitution constrain the exercise of amending authority by subsequent governments, represents an important contribution to the theory of constitutional legitimacy and constitutional continuity. This contribution is directly relevant to the current political situation in Bangladesh, in which a government that came to power through extra-constitutional means, the interim government established following Hasina's fall, has itself enacted significant amendments to the constitutional and legal framework.

Section 100.2: Enforced Disappearances and the Accountability Gap

The practice of enforced disappearances, in which persons are secretly detained by state security services and their fate and whereabouts are denied by the authorities, is one of the most serious and most underaddressed human rights problems in Bangladesh. The phenomenon of enforced disappearances under the Hasina government has been documented by human rights

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organisations including Human Rights Watch and Amnesty International over many years, with estimates suggesting hundreds of cases during the Awami League's fifteen-year rule.

The cases of enforced disappearances most relevant to the current transitional justice moment are those involving persons who were disappeared for their political activities or their legal work on behalf of the state's opponents. Mir Ahmad Bin Quasem, also known as Armaan, was leading the legal defence team for his father, Mir Quasem Ali, a prominent leader of the opposition Jamaat-e-Islami who was sentenced and hanged by the International Crimes Tribunal for collaborating with the Pakistan military in committing crimes against humanity during Bangladesh's 1971 War of Independence. On 9 August 2016, seven or eight officers picked Armaan up from his home in the presence of his wife, sister, and children. As a lawyer, he demanded a warrant for his arrest, but the officers refused and dragged him out of the house, put him in a van, and blindfolded him. He was freed after eight years, during which authorities denied holding him in custody. He described the facility where he was held as having been meticulously designed to give the detainees a worse than death experience. Human Rights Watch

The enforced disappearance of a lawyer who was defending his own father in a capital case before a state tribunal is an extraordinary violation of multiple fundamental rights simultaneously: the right to liberty, the right not to be subjected to torture or cruel treatment, the right of the accused to an effective legal defence, and the right of lawyers to practise without fear of reprisal. The fact that this specific case involved a person whose disappearance was directly connected to his work before the ICT demonstrates the extent to which the conduct of the earlier ICT proceedings fell short of the standards of a fair and independent judicial process.

The amended International Crimes (Tribunals) Act specifically lists enforced disappearances as a crime. Human Rights Watch The explicit criminalisation of enforced disappearances in the amended ICT Act, which reflects the definition of enforced disappearance as a crime against humanity in the Rome Statute, is a significant and welcome development. But the inclusion of this crime in the statute is only meaningful if it is applied consistently and without political discrimination, including to enforced disappearances committed under previous governments whose political heirs are now in positions of authority in the interim and post-interim political establishment.

Section 100.3: The Legacy of Authoritarian Rule and the Reform Commission

The Constitution Reform Commission proposed expanding fundamental rights, including the introduction of a bicameral parliament and term limits for top offices. The government re-established the International Crimes Tribunal to try those allegedly responsible for serious abuses under Hasina's regime and formed six reform commissions focused on areas considered critical, such as the constitution, election system, and judiciary. CIVICUS LENS

The establishment of six reform commissions by the Yunus interim government, covering the constitution, the electoral system, the judiciary, the police, the public administration, and women's rights, represents an ambitious programme of institutional reform that goes well beyond the transitional justice agenda narrowly conceived. The constitutional reform proposals, in particular, engage with questions about the structure of government, the protection of

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fundamental rights, and the design of democratic institutions that are of fundamental importance for the long-term quality of Bangladesh's democratic governance.

The judiciary reform commission's mandate is directly relevant to the transitional justice questions addressed in this Part. The proposals for judicial reform must address the institutional conditions that have allowed the judicial system to be subject to political pressure, that have produced the problematic features of the ICT proceedings documented throughout this chapter, and that have undermined the independence of the courts in ordinary criminal and civil proceedings. The specific institutional reforms required for a genuinely independent judiciary, including security of tenure for judges, transparent appointment processes, adequate financial resources for the courts, and the elimination of the structural dependencies that have made judges vulnerable to executive pressure, are discussed in the following Part of this commentary, which addresses the court system and procedural law more broadly.

CHAPTER ONE HUNDRED AND ONE: COMPARATIVE TRANSITIONAL JUSTICE AND LESSONS FOR BANGLADESH

Section 101.1: The Nuremberg and Tokyo Tribunals - Foundations and Critiques

The Nuremberg trials of 1945 to 1946, in which the major war criminals of the Nazi regime were prosecuted before the International Military Tribunal established by the Allied powers, represent the foundational moment of modern international criminal law and the beginning of the contemporary practice of transitional justice through criminal prosecution. The Nuremberg trials established several principles that have become foundational to international criminal law: the principle of individual criminal responsibility under international law regardless of whether the conduct was authorised by domestic law; the principle that following orders is not a defence to charges of international crimes; the principle that crimes against humanity can be prosecuted even when committed against a state's own citizens; and the principles of the Nuremberg Charter's substantive definitions of crimes against peace, war crimes, and crimes against humanity.

The critique of the Nuremberg trials as victor's justice, articulated at the time by scholars including Hans Kelsen and renewed by subsequent generations of critical international law scholars, has considerable force as a description of the political conditions under which the trials were conducted, but it does not necessarily undermine the normative validity of the principles the trials established. The question of whether a transitional justice process can simultaneously be the product of political contingency and a genuine instantiation of legal principle is one of the deep problems of the field, and it is directly relevant to the Bangladesh situation, where the ICT's proceedings have been conducted in political conditions that are frankly partisan but where the crimes being prosecuted are genuine and serious.

The Tokyo trials, the International Military Tribunal for the Far East that prosecuted Japanese war leaders from 1946 to 1948, generated a more sustained critique of the victor's justice problem, partly because the judgment itself contained a famous dissent from Justice Radhabinod

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Pal, the Indian member of the tribunal, who argued that the defendants should have been acquitted because the law applied in the proceedings was not established international law but was retroactively created by the victorious powers. Pal's dissent, while not endorsed by the majority of the tribunal and not generally accepted in the international law literature, raises genuinely important questions about the retroactive application of international criminal law norms and about the relationship between political power and the construction of legal standards in the aftermath of war. These questions are directly relevant to the ICT proceedings, where some defendants have argued that the law being applied was not clearly established at the time of the conduct charged.

Section 101.2: Rwanda - The ICTR, the Gacaca Courts, and the Mass Accountability Challenge

The transitional justice experience of Rwanda following the 1994 genocide, in which between 500,000 and 800,000 people were killed in approximately 100 days, is perhaps the most important comparative reference for Bangladesh's situation because it involves the prosecution of mass atrocity on a scale and with a degree of popular participation that is in some respects comparable to the 1971 events, and because Rwanda has developed a combination of international, national, and community-level accountability mechanisms that has no close parallel in any other transitional justice experience.

The International Criminal Tribunal for Rwanda (ICTR), established by the UN Security Council in 1994, prosecuted the most senior architects of the genocide. Its jurisprudence, while significant for the development of international criminal law, was marked by criticisms of slowness, expense, and distance from the Rwandan population it was meant to serve. The ICTR's decision to acquit some defendants and to impose sentences that many Rwandan survivors found inadequate generated significant dissatisfaction with the international court as a vehicle for meeting Rwanda's accountability needs.

The gacaca courts, the community-level transitional justice mechanism based on a traditional Rwandan dispute resolution institution, represented a radically different approach to the challenge of prosecuting the approximately 800,000 people who were implicated in the genocide. The gacaca process, in which community members gathered to hear testimony, confessions, and accusations and to determine individual responsibility and appropriate responses, was not a court in the formal sense; it lacked the procedural protections of a formal trial, including the right to legal representation and the right to challenge evidence through cross-examination. But it served a set of goals that the formal courts could not serve: it enabled the community-level processing of the genocide's legacy, created a forum for survivors to confront those who had harmed them and to hear acknowledgments of responsibility, and produced a degree of social accountability that the formal courts, by themselves, could never have achieved given the scale of participation in the genocide.

The lessons of the Rwandan experience for Bangladesh are instructive but must be applied with care. The gacaca model is not directly replicable in Bangladesh, both because the social and cultural context is very different and because the scale of the accountability challenge, while enormous, does not involve the same degree of mass participation in atrocity that characterised

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the Rwandan genocide. But the principle underlying the gacaca process, that accountability for mass atrocity must reach into the community level and must involve forms of acknowledgment and truth-telling that go beyond the formal prosecution of a handful of leaders, is directly applicable to Bangladesh's situation.

Section 101.3: Cambodia and the ECCC - Hybrid Justice and Its Limitations

The Extraordinary Chambers in the Courts of Cambodia (ECCC), established in 2003 through an agreement between the United Nations and the Cambodian government to prosecute the senior leaders of the Khmer Rouge for crimes committed during the Democratic Kampuchea period of 1975 to 1979, represents the most important example of a hybrid international-domestic transitional justice mechanism and provides important lessons for thinking about Bangladesh's accountability options.

The hybrid character of the ECCC, combining Cambodian and international judges, prosecutors, and staff, with international co-prosecutors and co-investigating judges working alongside their Cambodian counterparts, was designed to address the limitations of purely domestic proceedings (limited institutional capacity, political influence, lack of international legitimacy) while also addressing the limitations of purely international proceedings (distance from the affected community, lack of direct application of Cambodian law, difficulty of creating a lasting local institutional legacy). The ECCC's proceedings have resulted in convictions of several senior Khmer Rouge leaders, and its process of civil party participation, which allowed survivors to participate in the proceedings as civil parties with the right to address the court and to seek reparations, has been recognised as an important innovation in international criminal procedure.

The ECCC's limitations are equally instructive. The proceedings have been extraordinarily slow, taking decades to reach judgments against defendants who have aged significantly during the process. The cost of the hybrid mechanism has been enormous relative to the number of prosecutions achieved. The political interference of the Cambodian government in the proceedings, particularly its resistance to investigations of individuals other than the most senior Khmer Rouge leaders, has significantly limited the scope of accountability. And the legacy of the ECCC for Cambodia's domestic legal institutions has been less than the optimistic predictions of its founders suggested, because the institutional transfer of expertise and capacity has proved more difficult than anticipated.

The Bangladesh situation could potentially benefit from a hybrid mechanism of the kind represented by the ECCC, particularly for the proceedings related to the 2024 Monsoon Revolution, where the international dimension of the events (the UN fact-finding mission, the attention of the international human rights community, the extradition question arising from Hasina's presence in India) creates a natural opening for international participation in the accountability process. A hybrid tribunal that combined Bangladeshi and international judges, operating under a statutory framework that fully incorporated Rome Statute standards including the prohibition of the death penalty in these specific proceedings, and that allowed for meaningful participation by civil society and by victims, would be better positioned to achieve genuine accountability with international legitimacy than the reconstituted ICT as currently constituted.

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Section 101.4: Argentina and the Juridical Contribution to Truth

The Argentine transitional justice experience, which represents the most sustained and most successful use of criminal prosecution as a primary transitional justice mechanism in the post-authoritarian context, provides important lessons about the long time horizons over which prosecutorial accountability can be achieved and about the relationship between truth-telling and criminal prosecution.

Argentina's military dictatorship of 1976 to 1983 was responsible for the forced disappearance, torture, and killing of an estimated 30,000 people, and for the systematic theft of the children of disappeared persons who were given to military families. The immediate post-transition period saw the establishment of the National Commission on Disappeared Persons (CONADEP), whose report "Nunca Mas" (Never Again) provided a comprehensive public record of the junta's crimes. The initial prosecutions of the junta leaders in the Juicio a las Juntas of 1985 resulted in convictions and sentences that were subsequently undermined by the Punto Final and Obediencia Debida laws, which provided effective amnesties for most participants in the repression.

The revival of prosecutions in Argentina following the Supreme Court's 2005 declaration that the amnesty laws were unconstitutional represents one of the most remarkable legal developments in transitional justice history. The court's reasoning drew on both domestic constitutional principles and international human rights law, arguing that crimes against humanity are not subject to statutes of limitations and that amnesty laws that prevent their prosecution are incompatible with Argentina's obligations under international human rights conventions. The subsequent prosecutions have resulted in hundreds of convictions across all levels of the military and police hierarchies, creating a degree of comprehensive accountability for systematic human rights violations that is unmatched in any comparable transitional justice process.

The Argentine experience is relevant to Bangladesh in several specific ways. The constitutional argument that crimes against humanity are not subject to ordinary statutes of limitations, and that amnesty laws covering such crimes are incompatible with international human rights obligations, provides a potential basis for challenging any future attempt to provide immunity for the crimes committed during either the 1971 period or the 2024 Monsoon Revolution. The Argentine model of prosecuting across all levels of the hierarchy, rather than focusing exclusively on the top leadership, provides a model for a more comprehensive accountability process than Bangladesh has yet achieved. And the long time horizon of the Argentine process, which began in 1985 and is still producing convictions forty years later, provides a sobering reminder that genuine transitional justice is a generational project rather than a quick institutional fix.

CHAPTER ONE HUNDRED AND TWO: FAIR TRIAL STANDARDS AND THE RULE OF LAW IN TRANSITIONAL JUSTICE PROCEEDINGS

Section 102.1: The ICCPR Standards and Their Application to Bangladesh

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The ICCPR's fair trial guarantees, set out primarily in Articles 14 and 15, represent the minimum international legal standards that must be met in any criminal proceeding, including proceedings before special transitional justice tribunals. Article 14 of the ICCPR requires, among other things, that every person facing criminal charges be entitled to be tried without undue delay; to be tried in their presence and to defend themselves in person or through legal assistance of their own choosing; to examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf; and not to be compelled to testify against themselves or to confess guilt. Article 15 requires that no one be convicted of any offence which did not constitute a criminal offence at the time it was committed, and provides that a heavier penalty than the one applicable at the time of commission cannot be imposed.

The ICT proceedings, both in their original 1971-related form and in the reconstituted tribunal's 2024-related proceedings, have been found deficient with respect to several of these requirements by a variety of authoritative international bodies. The Human Rights Committee, which monitors compliance with the ICCPR, has not specifically addressed the Bangladesh ICT, but its general jurisprudence on fair trial standards provides clear guidance on the deficiencies in the existing framework. The UN human rights expert bodies, including the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers, have made observations about specific aspects of the proceedings that demonstrate compliance failures with the ICCPR standards.

The most fundamental procedural deficiency in the ICT framework, applicable to both phases of the tribunal's work, is the combination of the in absentia trial procedure with the death penalty. The UN Human Rights Committee has been unequivocal that trial in absentia in cases involving the death penalty is incompatible with the ICCPR: the unique gravity of the death penalty requires the highest possible standard of procedural protection, which is incompatible with the absence of the accused from their own trial. The OHCHR spokesperson, commenting on the November 2025 verdict, stated precisely this: "This is particularly vital when, as was the case here, the trials have been conducted in absentia and led to a capital punishment sentence." The UN Human Rights Office also expressed regret at the imposition of the death penalty, which it opposes in all circumstances. UN Television

The fair trial question is not merely a technical legal matter; it goes to the heart of the legitimacy of the transitional justice process and to the question of whether the proceedings can achieve their stated goal of justice for the victims of the 2024 repression. A conviction obtained in proceedings that did not meet international fair trial standards lacks the moral authority that genuine justice requires. It may provide some measure of symbolic satisfaction to those who were harmed by the defendant's conduct, but it cannot provide the kind of principled, evidence-based determination of individual responsibility that distinguishes criminal justice from political judgment. The victims of the Monsoon Revolution's repression deserve justice of the genuine kind, and the ICT's current procedural framework, even as amended in 2024, does not provide it.

Section 102.2: The Death Penalty and the International Human Rights Framework

The ICT's routine imposition of the death penalty in cases where it finds guilt established, for both the 1971-related and the 2024-related proceedings, represents a fundamental conflict with

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the evolving international human rights consensus on the death penalty that deserves explicit treatment in any analysis of Bangladesh's transitional justice framework.

The international human rights framework does not currently prohibit the death penalty as such for all crimes, but it restricts its application significantly. The ICCPR allows the death penalty only for the "most serious crimes," which the Human Rights Committee has interpreted to mean cases where the death penalty was the intentional and foreseeable consequence of the convicted person's conduct. The Second Optional Protocol to the ICCPR, to which Bangladesh is not a party, requires the abolition of the death penalty. The Rome Statute of the ICC, while not addressing this question directly, does not permit the death penalty in ICC proceedings, and the ICC's decision to exclude the death penalty was deliberately intended to establish a normative standard for transitional justice proceedings generally.

The imposition of the death penalty in transitional justice proceedings raises specific concerns beyond those that arise in ordinary criminal cases. The political character of transitional justice proceedings, the intense pressure from victims and their supporters for the harshest possible sentences, and the risk of political manipulation of the outcome all create conditions in which the safeguards against wrongful convictions may be particularly vulnerable. The combination of these vulnerability factors with the irreversibility of the death penalty creates a risk of irreversible injustice that is particularly severe in the transitional justice context.

Bangladesh executed several convicted 1971-era defendants, including Abdul Quader Molla in December 2013 and others in subsequent years. The execution of persons whose convictions were made in proceedings that the international legal community considered procedurally deficient represents an outcome that cannot be undone, and that creates a permanent stain on Bangladesh's transitional justice record regardless of the underlying guilt of those executed. The execution of Sheikh Hasina and Asaduzzaman Khan Kamal, if it ever occurs, in circumstances where both were convicted in absentia, in proceedings that are widely criticised as failing international fair trial standards, and in the intensely political atmosphere of the current Bangladeshi political transition, would represent an even more serious failure of the rule of law.

Section 102.3: The Rome Statute and Bangladesh's International Criminal Law Obligations

Bangladesh ratified the Rome Statute of the International Criminal Court in 2010, becoming a state party to the treaty that establishes the world's permanent international criminal court. The ratification of the Rome Statute carries both specific legal obligations and broader normative implications for Bangladesh's domestic criminal justice framework.

The specific legal obligations include the obligation to cooperate with the ICC in investigations and prosecutions that the Court undertakes, the obligation to implement the Rome Statute's definitions of international crimes in domestic law (or to accept ICC jurisdiction in cases where domestic law is inadequate), and the obligation not to act in ways that would frustrate the purposes of the Rome Statute, including by enacting amnesty laws that would prevent the prosecution of Rome Statute crimes.

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The broader normative implications are equally significant. The Rome Statute represents the international community's most comprehensive and most carefully elaborated statement of the standards that international criminal proceedings must meet. Its procedural framework, developed through the painstaking negotiations of the Rome Conference and subsequently refined through the Court's own jurisprudence, provides the gold standard for transitional justice proceedings. The fact that Bangladesh, as a Rome Statute party, has established domestic proceedings that in key respects fall short of the standards its own treaty obligations require is a significant inconsistency that the legal community, civil society, and the international human rights system have the responsibility to address.

The possibility of ICC jurisdiction over crimes committed in Bangladesh is theoretically present, both because Bangladesh is a state party and because the crimes alleged in both the 1971-related and 2024-related proceedings appear to meet the definition of crimes against humanity under Article 7 of the Rome Statute. The ICC's complementarity principle, which provides that the court exercises jurisdiction only when the state concerned is unwilling or unable genuinely to investigate and prosecute the relevant crimes, would ordinarily prevent ICC jurisdiction as long as Bangladesh's domestic proceedings are underway. But if those domestic proceedings do not meet the standard of genuine prosecution required by the complementarity principle, including the requirement of procedural fairness, the ICC's jurisdiction could in theory be triggered.

CHAPTER ONE HUNDRED AND THREE: REPARATIONS, MEMORY, AND THE SOCIAL DIMENSIONS OF JUSTICE

Section 103.1: The Reparations Deficit in Bangladesh's Transitional Justice Framework

Reparations, the obligation of states to provide adequate remedies to individuals and groups who have been harmed by serious violations of international human rights and humanitarian law, represent the dimension of transitional justice in which Bangladesh's record is weakest. Despite the scale of the atrocities committed in 1971, despite the formal recognition of those atrocities in the constitutional framework and in the legal proceedings of the ICT, no comprehensive reparations programme has ever been established for the survivors of the Liberation War and their families.

The absence of comprehensive reparations for 1971 victims is particularly striking given the scale of the need. The birangona, the women who were systematically raped during the conflict and who were designated as war heroines by Sheikh Mujibur Rahman but who in practice faced social stigma and family rejection rather than honour and support, have been the most egregiously neglected group in Bangladesh's post-conflict response. Their suffering, which combined the immediate trauma of rape with decades of social marginalisation, poverty, and the denial of any form of state recognition or support, represents a failure of justice that no amount of subsequent prosecution can remediate. The partial and inadequate government recognition programmes that have been established in more recent years do not approach the standard of reparations that international law requires.

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The November 2025 ICT verdict against Hasina included a direction to the government to pay compensation to the families of protesters killed during the Monsoon Revolution. The court stated that the government is directed to pay a considerable amount of compensation to the protesters killed in the July movement 2024 and also to take measures to pay adequate compensation to the wounded protesters, in consideration of the gravity of their injury and loss. It is unclear who would be expected to pay this compensation. Al Jazeera This direction, while symbolically important as an acknowledgment of the state's obligation to provide remedies to victims, leaves unresolved the fundamental question of the source and quantum of compensation and the process for distributing it equitably among a large number of affected persons.

The comparative experience of reparations programmes in other transitional justice contexts provides important guidance for the design of a comprehensive reparations programme for Bangladesh. The South African reparations programme, while widely criticised for the inadequacy of the amounts paid relative to the suffering documented by the TRC, provides a model of a systematic assessment of individual victims' needs followed by payment of a standard amount. The Rwandan programme, which combined individual reparations with community reconstruction assistance, provides a model of integrating individual and collective remedies. The Inter-American Court of Human Rights' reparations jurisprudence, developed in dozens of cases against states in the Americas for serious human rights violations, provides the most detailed guidance on the components of comprehensive reparations, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

Section 103.2: Memorialisation and the Politics of Historical Memory

The politics of historical memory in Bangladesh is inextricably intertwined with the politics of transitional justice, and the state's management of memorialisation, the official commemorations, museums, educational curricula, and cultural productions that shape how 1971 is remembered, has been a persistent site of political contestation that any serious analysis of transitional justice must address.

The national narrative of the Liberation War, as constructed and maintained by the Awami League governments that dominated Bangladesh's politics for the first decade after independence and again from 2009 to 2024, was organised around the singular heroism of Sheikh Mujibur Rahman and the Awami League as the architects and leaders of the liberation movement. This narrative, while not entirely false, systematically marginalised the roles of other leaders and organisations in the liberation struggle, including the contributions of those who became associated with other political parties, and it embedded a partisan reading of 1971 into the official commemorative culture that made the liberation narrative inseparable from the political interests of the party that controlled that narrative.

The response of the Yunus interim government and the subsequent BNP government to this partisan commemorative culture has been to contest it rather than to transcend it, replacing the Awami League's partisan framing with a different partisan framing that emphasises different aspects of the 1971 story and different sets of heroes. The removal of statues and murals associated with Sheikh Mujibur Rahman and the Awami League from public spaces, which occurred in the immediate aftermath of the August 2024 political transition, represents a

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particularly troubling aspect of this pattern. The destruction of memorials and public artworks associated with a fallen government is a form of symbolic violence against historical memory that, whatever one thinks of the specific political figures memorialised, sets a damaging precedent for the treatment of public space as an arena for partisan contest rather than for the inclusive commemoration of a shared national history.

Genuine memorialisation that serves the goals of transitional justice requires creating commemorative spaces and practices that are inclusive of all the victims of the atrocities being commemorated, that are honest about the complexity and contested character of historical events, and that are insulated from the partisan use of historical memory for present political purposes. The Liberation War Museum in Dhaka, established by civil society initiative rather than state authority, represents an important model of memorialisation that aspires to these standards, though even it has been caught up in the political battles over historical memory that the current transitional moment has intensified.

Section 103.3: The Role of Archives and Documentation in Transitional Justice

The documentary record of the 1971 atrocities, and the record of the human rights violations committed under subsequent governments including those of the Awami League, is an essential resource for any comprehensive transitional justice process. The availability of comprehensive and reliable documentation affects the quality of prosecutorial evidence in formal proceedings, the depth and accuracy of the historical record that truth commissions and similar bodies can produce, the ability of reparations programmes to identify victims and assess their losses, and the capacity of scholars and civil society organisations to hold authorities accountable for their claims about what occurred.

Bangladesh's documentary record of 1971 is substantial but incomplete and insufficiently systematised. The records of the ICT proceedings, the testimonies collected by researchers, the diplomatic and journalistic records from the period, and the materials held by liberation war museums and research institutions collectively constitute a rich archival resource. But much of this material is not accessible to researchers, is not digitised, and is not organised in ways that would allow systematic analysis. The National Archives of Bangladesh lacks the resources and the mandate to serve as a comprehensive repository for the historical record of the liberation struggle, and the political sensitivity of the subject matter has often made systematic archival work difficult.

The argument for creating a dedicated Liberation War Documentation Centre, with the resources to collect, preserve, digitise, and make accessible the full range of documentary evidence relating to 1971, has been made repeatedly by historians, archivists, and human rights scholars. Such a centre would serve multiple purposes: it would protect irreplaceable historical materials from deterioration and loss; it would make the historical record accessible to researchers in Bangladesh and internationally; it would provide a resource for educational programmes that need to convey the history of 1971 in a way that is based on evidence rather than partisan myth; and it would support the ongoing accountability processes by ensuring that the documentary record is preserved and accessible for future proceedings.

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CHAPTER ONE HUNDRED AND FOUR: INSTITUTIONAL CONDITIONS FOR SUCCESSFUL TRANSITIONAL JUSTICE

Section 104.1: Judicial Independence as a Prerequisite

The analysis throughout this Part has repeatedly demonstrated that the single most important institutional condition for a successful transitional justice process is the genuine independence of the judicial institution conducting the proceedings. The deficiencies of the ICT in its various phases can almost all be traced to the absence of sufficient judicial independence, to the political pressures that the proceedings were subjected to from the governments that established and supervised the tribunal, and to the structural features of the ICT's institutional design that made it vulnerable to those pressures.

Genuine judicial independence in the context of transitional justice requires more than the formal declaration that the tribunal is independent; it requires the concrete institutional arrangements that insulate the institution from political pressure. These include: security of tenure for judges, so that they cannot be removed from office because they make decisions that displease the government; financial independence from the executive branch, so that the institution's funding cannot be used as a tool of influence; transparent appointment processes that do not allow governments to stack the tribunal with loyalists; rules governing ex parte communications that are strictly enforced with meaningful sanctions for violations; and an appellate structure that provides genuine review of findings rather than pro forma confirmation of lower court decisions.

None of these features were adequately present in the ICT in either its original or reconstituted form. The judges of the reconstituted tribunal were appointed directly by the interim government in circumstances that left no doubt about the government's control of the appointment process. The procedural rules of the tribunal, while amended in 2024, still contain features that allow the tribunal to depart from the ordinary rules of evidence in ways that reduce the procedural protection available to defendants. And the political environment in which the tribunal operates, which includes the banning of the Awami League, the mass arrests of Awami League supporters, and the intense popular demand for harsh punishment of the Hasina government, creates precisely the conditions in which judicial independence is most difficult to maintain and most important to ensure.

Section 104.2: International Monitoring and the Legitimacy of Accountability Proceedings

The role of international monitoring in strengthening the legitimacy of transitional justice proceedings is one of the lessons most consistently demonstrated by the comparative experience. International observers who are present throughout the proceedings and who have a genuine mandate to assess their compliance with international standards, whose assessments are taken seriously by the domestic authorities, and whose recommendations are acted upon, can provide a form of accountability for the accountability process itself that domestic institutions, when under political pressure, cannot provide for themselves.

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In response to international concerns, Bangladesh's interim government amended the ICT Act to allow international observers and even the live broadcast of proceedings. The key lies in adopting a system of reforms that brings transparency and fairness without handing over control to external authorities. Bangladesh may prefer inviting independent international monitors from the UN Office of the High Commissioner for Human Rights and regional bar associations in accordance with its recent amendments. The Diplomat

The amendment to allow international observers is a welcome development, but the effectiveness of international monitoring depends on the observer's independence, the scope of their mandate, and the mechanisms through which their observations are translated into institutional changes. International monitors who have no power to make public reports, who are excluded from key stages of the proceedings, or whose recommendations are systematically ignored do not provide the legitimacy benefit that genuine international oversight can confer. The MOU signed between Bangladesh's interim government and the OHCHR in July 2025, establishing a three-year mission to support the promotion and protection of human rights, provides a basis for systematic engagement between the international human rights machinery and Bangladesh's transitional justice processes that should be used to its full potential. Human Rights Watch

Section 104.3: The Political Economy of Transitional Justice and the Conditions for Impartiality

The political economy of transitional justice, the distribution of interests, incentives, and power among the various actors who shape the design and implementation of transitional justice mechanisms, is a subject that the normative literature on the field has too often neglected in favour of the philosophical and legal analysis of what justice requires. But understanding the political economy is essential for designing transitional justice mechanisms that are not merely theoretically sound but practically effective.

The fundamental political economy problem in Bangladesh's transitional justice is the same problem that afflicts most domestic transitional justice processes: the institutions of justice are controlled by political actors who have partisan interests in the outcomes of the accountability proceedings. This creates a structural incentive for the instrumentalisation of transitional justice, using accountability mechanisms to weaken political opponents rather than to achieve genuine justice. The evidence that this incentive has been acted upon in Bangladesh is, as the analysis throughout this Part has demonstrated, substantial and consistent across multiple governments and multiple phases of the ICT's existence.

The structural solution to the political instrumentalisation of transitional justice is the creation of institutions that are genuinely independent of the government of the day, with accountability mechanisms that run to the international community and to civil society rather than exclusively to the executive branch. This is easier to prescribe than to achieve, particularly in a context where the international community's leverage on Bangladesh's domestic judicial institutions is limited by sovereignty concerns and where civil society's capacity to hold powerful institutions accountable is constrained by the ongoing repression of dissent documented by human rights organisations.

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Civil society continues to document arbitrary arrests, press freedom violations, and attacks on religious minorities. Around 140 journalists viewed as aligned with the previous regime have faced charges, with 25 accused of crimes against humanity, forcing many into hiding. Attacks on media outlets, particularly those accused of promoting secular or anti-Islamic values, have continued. CIVICUS LENS The repression of the media and civil society in the current political moment reduces the capacity of these institutions to provide the external accountability that might otherwise serve as a check on the political instrumentalisation of the transitional justice process.

CHAPTER ONE HUNDRED AND FIVE: TOWARDS A COMPREHENSIVE TRANSITIONAL JUSTICE FRAMEWORK FOR BANGLADESH

Section 105.1: The Five-Pillar Approach and Bangladesh's Accountability Gaps

The United Nations Secretary-General's 2004 report on transitional justice, which identified the five pillars of prosecution, truth, reparations, institutional reform, and national consultations as the comprehensive framework for addressing the legacy of mass atrocity, provides the most authoritative normative guide for evaluating Bangladesh's transitional justice record and designing an adequate comprehensive response.

Bangladesh's record against this five-pillar framework is deeply uneven. On prosecution initiatives, the ICT has produced a significant number of convictions, though the quality of the proceedings has been consistently criticised. On the right to truth, virtually nothing has been achieved: no truth commission has been established, no comprehensive official history of the 1971 events has been produced, and the historical narrative remains deeply contested and politically distorted. On reparations, the government's response has been minimal and deeply inadequate given the scale of the harm. On institutional reform, the reform commissions established by the Yunus government represent a significant effort but have been constrained by the political conditions of the transition. On national consultations, the exclusive rather than inclusive character of the political transition, which has systematically excluded the Awami League and its supporters from meaningful participation, represents a fundamental departure from the consultative approach that the transitional justice literature identifies as essential for durable outcomes.

The design of a comprehensive transitional justice framework for Bangladesh that addresses all five pillars simultaneously would be an ambitious undertaking under any circumstances, and it is more ambitious still in the current political context. But the analysis of the comparative experience suggests that ambitious frameworks, even when they fall far short of full implementation, produce better outcomes than narrow frameworks focused exclusively on prosecution. The establishment of a truth commission, even a truth commission with limited resources and a restricted mandate, would produce a public record of historical events that transcends the legally narrow findings of criminal proceedings and creates a basis for a broader social reckoning with the 1971 legacy. The development of a reparations programme, even an underfunded one, would signal the state's acknowledgment of its obligations to survivors and

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their families and would provide some material benefit to the most marginalised group of victims. The genuine implementation of institutional reforms, in the police, the security services, and the judiciary, would address the structural conditions that have allowed political violence and impunity to persist across multiple government administrations.

Section 105.2: The Case for a National Truth Commission

The case for establishing a National Truth Commission in Bangladesh has been made by legal scholars, human rights activists, and historians for many years, and the arguments for it are stronger in the current political moment than they have ever been. The political transition of 2024 has created a window of opportunity for institutional innovation that may not remain open indefinitely, and the failure to use this window for the creation of a truth commission would represent a significant missed opportunity.

A Bangladesh National Truth Commission, designed for the specific conditions of Bangladesh's transitional justice challenge, should have several distinctive features. It should have a mandate that covers not only the events of 1971 but also the significant human rights violations committed by subsequent governments, including the enforced disappearances, the extra-judicial killings, and the systematic abuse of state institutions for political purposes that have characterised Bangladesh's post-independence political history across multiple administrations. This broad mandate would signal that the truth commission is not a partisan instrument of the current government against the previous one but a genuine national effort to reckon with a history of political violence that predates and transcends any single government.

The truth commission should have a composition that reflects the full diversity of Bangladesh's political and social life, including representation from communities that have been most directly affected by the various episodes of violence in its mandate. It should have genuine independence from the government, with members appointed through a transparent, consultative process that involves civil society and is not subject to unilateral executive control. It should have the resources to conduct meaningful investigations, to travel throughout the country to collect testimony, and to produce a comprehensive report that will serve as a permanent authoritative record of the events it examines.

The truth commission should specifically address the situation of those who are now most urgently in need of acknowledgment and reparation: the birangona of 1971, whose suffering has been commemorated in name while being neglected in substance; the families of those killed in the Monsoon Revolution of 2024; the survivors of enforced disappearances under the Hasina government; and the members of religious and ethnic minorities whose communities have been targeted by communal violence across multiple periods of Bangladesh's history.

Section 105.3: Institutional Reform as Transitional Justice

The reform of institutions that have been complicit in or failed to prevent human rights violations is a component of transitional justice that is often insufficiently integrated with the more visible mechanisms of prosecution and truth-telling but that may have the most durable long-term impact. Institutions that have been used for political repression, that have developed cultures of

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impunity, and that have failed to hold their members accountable for misconduct will continue to produce the same harmful outcomes after the transitional moment has passed unless their internal structures, cultures, and accountability mechanisms are fundamentally reformed.

By reforming or structuring just and effective public institutions, institutional reform lets post-conflict and transitional governments stop the recurrence of future human rights violations. The removal of employees responsible for gross violations of human rights in public services, predominantly in the security and justice sectors, shall comply with due process of law and the principle of non-discrimination. Institutional reform should further incorporate comprehensive training programmes for public officials and employees on applicable human rights and international humanitarian law standards. Euclid

The institutions most urgently in need of transitional justice-focused reform in Bangladesh include the police and security services, whose participation in the repression of the Monsoon Revolution and in the enforced disappearance programme of the Hasina government represents a profound institutional failure that cannot be addressed by the prosecution of individual officers alone; the judiciary, whose vulnerability to political pressure has been documented throughout this commentary; the National Security Intelligence and the Rapid Action Battalion, the latter of which has been sanctioned by the United States for gross human rights violations and whose institutional culture of impunity requires fundamental transformation; and the prison system, which has been used as a site of torture and mistreatment for political detainees and which requires comprehensive reform of both its physical conditions and its accountability framework.

CONCLUDING SYNTHESIS OF PART TEN: JUSTICE, MEMORY, AND THE FUTURE OF BANGLADESH

The argument of Part Ten has moved through the history of the Liberation War of 1971 and its mass atrocities; the legal framework of the International Crimes (Tribunals) Act 1973; the first phase of the ICT's proceedings under the Hasina government and their procedural deficiencies; the philosophical foundations of transitional justice including retributive and restorative approaches and the empirical literature on what works; the 2024 Monsoon Revolution and the extraordinary political transition it produced; the reconstitution of the ICT and the November 2025 verdict against Sheikh Hasina; the comparative experience of transitional justice in Rwanda, Cambodia, Argentina, South Africa, and at the Nuremberg and Tokyo tribunals; the political violence of the post-independence period including the 1975 coup and its legal aftermath; the dimensions of transitional justice that Bangladesh has neglected including truth-telling, reparations, and national consultations; and the institutional conditions, including judicial independence and international monitoring, that are required for successful transitional justice processes.

The overall conclusion of this Part is deeply troubling, though not without some elements of qualified optimism. Bangladesh has been attempting to reckon with the legacy of the 1971 atrocities for more than half a century, and the record of those attempts is one of repeated failure: initial accountability processes abandoned under political pressure, a decades-long rehabilitation

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of the collaborationist forces and their political successors, a renewed prosecution effort that achieved some accountability but was compromised by political instrumentalisation and procedural deficiency, and now a new political transition that is generating its own accountability demands in conditions that reproduce many of the deficiencies of the earlier processes.

The elements of qualified optimism lie in the following: the constitutional jurisprudence on the Fifth Amendment and the prosecution of the 1975 killers demonstrates that long-delayed justice is possible; the reform commissions established by the Yunus government represent a serious attempt at institutional transformation that goes beyond the narrow prosecution focus of previous accountability efforts; the OHCHR mission and the engagement of the international human rights system provide external accountability that was largely absent from the earlier ICT proceedings; and the extraordinary civic energy released by the Monsoon Revolution, the energy of a young population that is demanding something genuinely different from Bangladesh's political future, creates a social and political basis for transformative institutional change that has rarely been present in Bangladesh's post-independence history.

Whether that civic energy will be channelled into genuinely transformative institutional reform, or whether it will be captured by the same cycles of partisan political conflict that have produced Bangladesh's recurring failures of transitional justice, is a question that will be answered not by legal scholarship but by political action. What legal scholarship can do, and what this commentary aspires to contribute, is to provide the intellectual framework within which the choices are understood, the historical experience within which they are contextualised, and the normative standards against which they are evaluated. Bangladesh deserves a transitional justice framework adequate to the scale of its historical trauma and adequate to the aspirations of the citizens who have sacrificed so much across so many generations to build a just and democratic state. That adequate framework is possible, but it has not yet been achieved.

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END OF PART TEN

Part Eleven will address the comprehensive reform of Bangladesh's court system and procedural law, covering: the structural architecture of the court system from the Supreme Court to the magistracy; the crisis of case backlogs and judicial delay; the constitutional and statutory framework of judicial independence; the reform of civil procedure and the Code of Civil Procedure 1908; criminal procedure reform and the Code of Criminal Procedure 1898;

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alternative dispute resolution and its relationship to the formal court system; the digitalisation of court processes and the potential and limits of technology in judicial reform; the reform of the legal aid system and access to justice; the establishment of specialised courts including commercial courts, environmental courts, and the reform of the family court system; and the relationship between procedural reform and substantive justice, examining how procedure shapes the distribution of legal outcomes and what procedural reform can and cannot achieve without accompanying changes in the substantive law and the social conditions of access to courts.

Part Twelve, the final part of this twelve-part commentary, will address the future of Bangladesh's law in the global legal order, bringing the entire commentary to its conclusion by examining: Bangladesh's engagement with international law and international institutions; the constitutional basis of international law's reception into the domestic legal order; the role of international investment law and trade law in shaping Bangladesh's economic development; the emerging field of international environmental law and Bangladesh's particular vulnerability as a frontline climate state; the future of the legal profession in the age of digital technology, artificial intelligence, and global legal practice; the vision of a reformed Bangladeshi legal system adequate to the challenges of the twenty-first century; and the intellectual tradition of legal commentary itself as a contribution to the ongoing project of building a just legal order.

PART ELEVEN: THE COURT SYSTEM, PROCEDURAL LAW, AND THE ARCHITECTURE OF JUSTICE IN BANGLADESH

PREFACE TO PART ELEVEN

The preceding ten Parts of this commentary have moved through the civilizational roots of Bengali legal thought, the colonial transformation of legal institutions, the birth of the Bangladeshi state and its constitutional order, the structures of the Bar Council and legal education, the substantive domains of public and private law, the challenges of constitutional adjudication, the rights of citizens under a post-colonial framework, the politics of legal reform, and the extraordinary complexity of transitional justice in a society that has experienced mass atrocity followed by prolonged political conflict. All of that analysis converges, in this Part, on the institution that ultimately gives practical meaning to every legal rule and every legal right: the court.

Courts are not, in the most fundamental jurisprudential sense, merely administrative structures for resolving disputes. They are, as Ronald Dworkin argued in Law's Empire, institutions whose function is the interpretation of a community's political morality, giving concrete expression, through judgment, to the principles that the community professes to hold. They are, as Owen Fiss insisted in his famous essay "Against Settlement," public institutions engaged in the elaboration of public values, not merely private dispute resolvers. They are, in the tradition of H.L.A. Hart, the institutions through which the secondary rule of recognition operates, by which primary rules of obligation are identified, applied, and enforced. And they are, in the tradition of Lon Fuller, institutions of principled adjudication that must satisfy certain procedural morality requirements if they are to qualify as genuine courts at all rather than as instruments of arbitrary power.

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In Bangladesh, the gap between these theoretical characterizations of courts and the lived reality of the court system is vast, persistent, and deeply troubling. Bangladesh's courts are overwhelmed by a backlog that, as of December 2024, stands at approximately 4.5 million pending cases across all levels of the judiciary. Its procedural codes are colonial-era instruments that were designed for a very different social and administrative context and that have accumulated more than a century of adversarial manipulation and institutional decay. Its judicial appointments, promotions, and postings have been subject to executive influence that has corroded the structural independence of the judiciary and created conditions in which judicial decision-making has been shaped by considerations of political loyalty as well as, or sometimes instead of, legal principle. Its lower courts operate in physical conditions that are often inadequate, with insufficient space, staff, and technological infrastructure to manage their caseloads effectively.

At the same time, the period beginning with the Monsoon Revolution of July and August 2024 has initiated the most ambitious programme of judicial reform in Bangladesh's post-independence history. Chief Justice Syed Refaat Ahmed's Judicial Reform Roadmap, announced on 21 September 2024, has generated a series of legislative, administrative, and institutional innovations that address, for the first time in a systematic way, many of the structural deficiencies that have undermined the court system for decades. The Supreme Court Secretariat Ordinance of November 2025, establishing an autonomous administrative arm for the judiciary for the first time in Bangladesh's history, represents a potentially transformative institutional development. The Code of Civil Procedure (Amendment) Ordinance 2025, which introduces digital summons, limits on adjournments, and reformed execution procedures, represents the most significant amendment to the civil procedure framework since independence. These developments, taken together, create a historical moment of exceptional importance for the future of Bangladesh's court system.

This Part examines both the enduring structural problems and the emerging reform initiatives. It does so with the conviction, which has animated this entire commentary, that understanding the historical depth of the problems is the essential precondition for designing reforms adequate to their scale. The physician who treats only symptoms, without understanding the underlying pathology, will not cure the patient. The judicial reformer who addresses procedural rules without understanding the institutional culture, the social conditions, and the jurisprudential assumptions that have produced the present system will not fundamentally improve access to justice. This Part aspires to provide both the pathological diagnosis and the therapeutic framework that genuine reform requires.

CHAPTER EIGHTY-SEVEN: THE CONSTITUTIONAL AND STATUTORY ARCHITECTURE OF THE COURT SYSTEM

Section 87.1: The Constitutional Framework of Judicial Power

The Constitution of Bangladesh, adopted in November 1972, establishes the framework within which the entire court system operates. Article 94 creates the Supreme Court of Bangladesh, comprising the Appellate Division and the High Court Division. Article 101 vests in the High Court Division such original, appellate, and other jurisdiction and powers as are or may be

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conferred upon it by the Constitution or any other law. Article 103 vests in the Appellate Division jurisdiction to hear and determine appeals from judgments, decrees, orders, and sentences of the High Court Division. Article 104 gives the Appellate Division power to make such orders as may be necessary for doing complete justice in any cause or matter pending before it, a provision of vast potential scope that has been the subject of extensive jurisprudential development.

The constitutional provisions relating to judicial independence are formally impressive but have been operationally compromised throughout Bangladesh's post-independence history. Article 94(4) declares that in the exercise of their judicial functions, the judges of the Supreme Court shall be independent. Article 116A, inserted by the Fourth Amendment in 1975 and subsequently confirmed by the reinstituted Constitution, provides that subject to the provisions of the Constitution, all persons employed in the judicial service and all magistrates shall be independent in the exercise of their judicial functions. These declarations of independence have been consistently undermined, as Parts Seven and Eight of this commentary documented in detail, by constitutional and legislative provisions that give the executive substantial control over judicial appointments, postings, promotions, and discipline.

The constitutional basis for the subordinate judiciary is established by Articles 114 and 116. Article 114 provides for the establishment of such subordinate courts as may be established by law. Article 116 provides that the control (including the power of posting, promotion, grant of leave, and discipline) of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the Supreme Court. However, in practice, this constitutional mandate for Supreme Court control over the subordinate judiciary has been largely unfulfilled until very recently. Executive ministries have exercised practical control over judicial postings, promotions, and disciplinary matters, and the Supreme Court's authority under Article 116 has been more formal than real.

The jurisprudential significance of this gap between constitutional text and institutional practice cannot be overstated. The doctrine of separation of powers, which is a foundational principle of Bangladesh's constitutional order, requires not merely formal legal separation between the executive, legislative, and judicial branches but genuine operational independence of each branch from the others. Montesquieu's original formulation of the separation of powers doctrine, which has been elaborated by subsequent constitutional theorists from Madison and Hamilton in the Federalist Papers to contemporary constitutional scholars like Bruce Ackerman and Vicki Jackson, was motivated precisely by the recognition that formal declarations of independence are worthless without the institutional arrangements that make independence real.

The Bangladeshi judiciary's structural dependence on the executive for its administrative functions has been identified as a fundamental constitutional problem by the Supreme Court itself. In the landmark judgment in Secretary, Ministry of Finance v. Masdar Hossain (1999), which is examined in detail in Section 87.3 below, the Appellate Division held that the separation of the judiciary from the executive, directed by Article 22 of the Constitution as a directive principle of state policy, required the effective implementation of the constitutional provisions on judicial independence, and that the government's failure to act on these provisions for twenty-seven years since independence was itself a constitutional violation. The Masdar

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Hossain judgment is one of the most important constitutional decisions in Bangladesh's post-independence jurisprudence, and its full implications have still not been realised nearly three decades later.

Section 87.2: The Structural Architecture of the Court System

The court system of Bangladesh operates in multiple tiers, each with distinct jurisdiction, procedure, and institutional culture. Understanding the full architecture of this system is essential for any analysis of its problems and its reform.

At the apex sits the Supreme Court of Bangladesh, which comprises the Appellate Division and the High Court Division. The Appellate Division, consisting of the Chief Justice and such number of judges as may be determined by the President, is the court of final appeal in the legal system. Its jurisdiction extends to appeals from judgments, decrees, orders, and sentences of the High Court Division. Its power to do complete justice under Article 104 allows it to make orders that transcend the normal scope of appellate review, including orders giving directions to lower courts and public authorities that are binding under Article 112 on all executive and judicial authorities in the Republic. As of mid-2025, the Appellate Division has only seven judges, a number entirely inadequate to its caseload. The backlog at the Appellate Division, as of June 2025, stood at over 37,000 pending cases, a number that has been rising significantly year on year.

The High Court Division, consisting of the Chief Justice and such number of other judges as may be determined by the President, exercises a vast range of jurisdiction. It has original jurisdiction in admiralty and company matters, and in writ petitions under Article 102 of the Constitution. Its writ jurisdiction, which allows citizens to challenge government action that infringes fundamental rights or that is in excess of legal authority, is the most important constitutional mechanism for the protection of individual rights against the state and has been exercised in a large and constitutionally significant body of jurisprudence. The High Court Division also exercises appellate jurisdiction over the decisions of subordinate courts in both civil and criminal matters. As of June 2025, the High Court Division had over 616,000 pending cases, served by only 111 judges.

Below the Supreme Court, the subordinate court system is organized by the Code of Civil Procedure 1908, the Code of Criminal Procedure 1898, and a large body of special legislation. In civil matters, the subordinate courts are organized in a hierarchy that includes, at the district level, the Court of the District Judge (which functions as both a court of first instance in important civil matters and a court of appeal from lower civil courts), the Court of the Additional District Judge (which functions similarly), and below these the Courts of Joint District Judge and Senior Assistant Judge and Assistant Judge. In criminal matters, the Sessions Court, presided over by a Sessions Judge or Additional Sessions Judge, exercises jurisdiction over serious offences. Below the Sessions Court are the Courts of Chief Judicial Magistrate, Judicial Magistrate, and Metropolitan Magistrate (in the metropolitan areas of Dhaka, Chattogram, and other large cities). As of mid-2025, the lower court system operates with approximately 2,187 judges, serving a population of over 170 million people. The resulting judge-to-population ratio

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of approximately one judge per 78,000 people is among the weakest in South Asia and is entirely inadequate to the demand placed upon the courts.

Alongside the ordinary court hierarchy, Bangladesh maintains a substantial apparatus of special tribunals and courts. These include the Nari O Shishu Nirjatan Daman Tribunal (Women and Children Repression Prevention Tribunal), established under the Nari O Shishu Nirjatan Daman Ain 2000, which exercises exclusive jurisdiction over crimes of violence against women and children including rape, acid attacks, child trafficking, and dowry-related offences. The Labour Courts, established under the Bangladesh Labour Act 2006 and the Bangladesh Labour (Amendment) Act 2013, exercise jurisdiction over employment and trade union disputes. The Administrative Tribunals, established under the Administrative Tribunals Act 1980, hear service disputes of government employees. The Anti-Corruption Commission's dedicated courts exercise jurisdiction over corruption offences prosecuted under the Anti-Corruption Commission Act 2004. The Artha Rin Adalat (Money Loan Courts), established under the Artha Rin Adalat Ain 2003, hear suits for the recovery of loans advanced by financial institutions. The Tax Appellate Tribunal and Customs, Excise and VAT Appellate Tribunal hear revenue matters. And the International Crimes Tribunal, established under the International Crimes (Tribunals) Act 1973 and recently reconstituted with dramatically expanded jurisdiction, exercises the jurisdiction examined in detail in Part Ten.

The proliferation of special tribunals represents a structural response to the inadequacy of the general court system, but it has generated its own problems. The multiplication of jurisdictional categories creates confusion and opportunity for procedural delay in determining which tribunal should hear a particular dispute. The quality of adjudication in special tribunals varies enormously, partly because the appointment standards and training requirements for tribunal members are often less demanding than those for regular judicial officers. The procedural frameworks of different tribunals are frequently inconsistent with each other and with the general principles of the Code of Civil Procedure and the Code of Criminal Procedure, creating a fragmented and incoherent procedural landscape. And the special tribunal system has been used, as Part Ten documented, as an instrument of political justice as well as genuine adjudication, with tribunals created or expanded to achieve outcomes that the ordinary court system was not delivering with sufficient speed or certainty.

Section 87.3: The Masdar Hossain Judgment and the Judicial Independence Mandate

No analysis of the constitutional framework of Bangladesh's court system can proceed without a thorough examination of the Appellate Division's judgment in Secretary, Ministry of Finance and Others v. Masdar Hossain and Others (2000), which is generally known simply as the Masdar Hossain case. This judgment, delivered in 1999 and representing the culmination of a writ petition filed in 1993, is the foundational constitutional document for the independence of Bangladesh's subordinate judiciary and remains the most consequential judicial decision on institutional structure since the founding of the Republic.

The factual background of the Masdar Hossain case involves the complex and long-standing dispute between the constitutional mandate for judicial independence and the practical reality of executive control over the subordinate judiciary. The respondents, who were judicial officers in

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the subordinate courts, challenged the constitutional validity of the system of dual control under which their service conditions were regulated partly by executive government departments, particularly the Ministry of Law, Justice and Parliamentary Affairs, rather than exclusively by the Supreme Court as Article 116 of the Constitution required. Their core argument was that the requirement of Article 116, that control including the power of posting, promotion, grant of leave, and discipline of judicial officers shall vest in the Supreme Court, had been systematically circumvented by executive practice, and that this circumvention constituted a violation of both Article 116 and the constitutional principle of separation of powers.

The Appellate Division's judgment, delivered by a seven-judge bench, held comprehensively in favour of the respondents. The Court held that Article 116 vested control of judicial officers in the Supreme Court in the fullest sense, meaning that the executive had no constitutional authority to exercise any of the specified functions of posting, promotion, leave, and discipline in relation to officers of the judicial service without the concurrence of the Supreme Court. The Court further held that the principle of separation of powers required the complete insulation of the subordinate judiciary from executive control, and that the long-standing practice of executive management of judicial service matters was constitutionally incompermissible. The Court directed the government to take all necessary steps, including legislative steps, to implement the constitutional mandate of judicial independence within a specified period.

The Masdar Hossain judgment is remarkable for several reasons from a jurisprudential perspective. First, it demonstrates the Bangladesh Supreme Court's willingness to use its constitutional authority to impose structural requirements on the executive branch that go well beyond the ordinary scope of writ jurisdiction in the common law tradition. The judgment did not merely declare existing arrangements invalid; it directed the executive to take positive action to bring the institutional structure of government into conformity with constitutional requirements. This is a form of structural injunction that is more familiar in the American constitutional tradition, where courts have issued sweeping institutional reform orders in cases involving school desegregation, prison conditions, and mental health institutions, than in the British-derived common law tradition that is formally Bangladesh's legal inheritance.

Second, the Masdar Hossain judgment raises profound questions about the gap between constitutional mandates and institutional realities. The judgment was delivered in 1999. The formal separation of the judiciary from the executive, which the judgment required, did not occur until November 2007, nearly eight years after the judgment was delivered. And even after the formal separation, as subsequent Parts of this commentary have documented, the executive continued to exercise practical influence over the judiciary through mechanisms that were technically consistent with the formal separation but that preserved the substance of executive control. The 2025 Supreme Court Secretariat Ordinance, which finally creates the autonomous administrative structure that the Masdar Hossain judgment required a quarter century ago, demonstrates how difficult it is to translate constitutional mandates into institutional realities in a system where the executive has strong incentives to resist genuine judicial independence.

Third, the Masdar Hossain judgment illustrates the important constitutional principle that structural provisions of the Constitution are not merely advisory but are binding legal requirements that the courts can enforce. This principle, which might appear obvious in the

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abstract, has significant practical implications for the interpretation and application of other structural constitutional provisions, including those relating to the composition of the legislature, the powers of the executive, and the rights of citizens. The Masdar Hossain Court's reasoning that constitutional provisions on judicial independence impose positive obligations on the executive to establish the institutional arrangements necessary for that independence is a form of constitutional reasoning that has been applied in other contexts in subsequent Bangladesh jurisprudence.

Section 87.4: The 2024-2025 Reform Roadmap and the New Institutional Architecture

The appointment of Syed Refaat Ahmed as the twenty-fifth Chief Justice of Bangladesh on 11 August 2024, immediately following the political transition of the Monsoon Revolution, initiated a period of judicial reform that has moved with a speed and ambition unprecedented in Bangladesh's post-independence history. The Chief Justice's Reform Roadmap, announced on 21 September 2024 in an address to the judges of the subordinate courts, established a comprehensive framework for judicial institutional reform that has been substantially implemented over the following eighteen months.

The Roadmap identified six principal areas of reform: judicial independence and its institutional architecture; transparency in judicial appointments; case management and backlog reduction; digitalisation of court processes; enhancement of legal aid and access to justice; and capacity development for the judiciary. Each of these areas has seen significant activity in the period since the Roadmap was announced, though progress has been uneven and some critical elements of the reform programme remain incomplete or contested.

The most consequential institutional development of the reform period is the Supreme Court Secretariat Ordinance, promulgated in November 2025 and inaugurated on 11 December 2025. The Ordinance establishes, for the first time in Bangladesh's history, an autonomous administrative arm of the Supreme Court with comprehensive authority over the administration of the subordinate judiciary. The Secretariat, headed by a Secretary with status equivalent to a senior government secretary, is responsible for judicial administration, personnel management, and coordination of judicial governance under the supervision of the Supreme Court. Under the Ordinance, authority over the transfer, promotion, and discipline of lower court judges is vested in the Secretariat under the control of the Chief Justice, removing these functions from the executive ministries that have historically exercised them.

This reform directly addresses the structural vulnerability identified in the Masdar Hossain case and repeatedly documented in subsequent scholarship: the administrative dependence of the judiciary on executive ministries for its operational requirements. As the Daily Star editorial quoted in the introduction to this Part observed, administrative dependence is political dependence in slower form, and without autonomous administrative capacity, talk of judicial independence remains theatrical. The Supreme Court Secretariat Ordinance transforms the constitutional promise of Article 116 into an operational reality, creating the institutional structure within which genuine judicial independence can be achieved.

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However, the fate of the Secretariat Ordinance in the post-interim political environment demonstrates the fragility of institutional reforms that are created by ordinance rather than by parliamentary legislation. The special parliamentary committee reviewing the interim government's 133 ordinances recommended, in April 2026, that the Supreme Court Secretariat Ordinance be allowed to lapse rather than be ratified by parliament. This recommendation, if implemented, would repeal the institutional architecture that the Ordinance created and restore executive control over the administrative functions of the subordinate judiciary. The political economy of this outcome reflects the same dynamic that has frustrated judicial reform throughout Bangladesh's history: the executive branch's strong institutional interest in maintaining its practical leverage over the judiciary, and the legislature's capture by political forces that share that interest.

The Supreme Court Judges Appointment Ordinance 2025, which established the Supreme Judicial Appointment Council as the mechanism for recommending appointments to the higher judiciary, is similarly threatened by the parliamentary committee's recommendation that it be repealed. The Appointment Ordinance was designed to address the problem of patronage appointments identified in Writ Petition No. 3936 of 2025, in which the High Court Division acknowledged defects in how the constitutional appointment scheme had worked in practice, noting concerns about non-merit considerations in the selection of judges. A process of transparent, merit-based appointment through an independent council, rather than appointment on the informal recommendation of the governing party through the constitutional consultation mechanism, would represent a fundamental change in the politics of judicial appointments in Bangladesh. Its repeal would restore the previous arrangement, which all serious scholars of Bangladesh's judiciary have identified as a major structural vulnerability.

CHAPTER EIGHTY-EIGHT: THE CRISIS OF CASE BACKLOGS AND JUDICIAL DELAY

Section 88.1: The Scale and Anatomy of the Backlog Problem

The case backlog crisis of Bangladesh's court system is not merely an administrative inconvenience; it is a fundamental denial of justice to millions of citizens and a structural failure of the rule of law that undermines the entire edifice of legal rights that this commentary has examined across its preceding Parts. The numbers are staggering in their scale and deeply troubling in their implications. As of December 2024, approximately 4.5 million cases were pending across the judiciary, including over 37,000 at the Appellate Division, over 616,000 at the High Court Division, and approximately 3.9 million at the lower courts. A further 256,000 cases were added to the backlog in the period from July to September 2025 alone, demonstrating that the system continues to accumulate a net increase in pending cases even as disposal rates have improved somewhat under the reform initiative.

Understanding why this backlog exists requires examining not simply the numbers but the underlying institutional, procedural, cultural, and structural factors that produce it. A superficial analysis might attribute the backlog to an insufficient number of judges, and judge numbers are indeed a serious problem: Bangladesh's ratio of approximately one judge per 78,000 people is far below the ratio recommended by international judicial administration standards and far below the

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ratios in comparable jurisdictions. India, which is itself far from adequately provisioned, has a ratio of approximately one judge per 50,000 people. The United Kingdom has approximately one judge per 11,000 people. The scale of this difference is not merely a matter of resources; it reflects a fundamental political choice about the priority to be given to justice delivery relative to other claims on public expenditure.

But the judge deficit, while real and serious, is not the only or even the primary cause of the backlog. A careful analysis of the anatomy of the problem reveals multiple interacting factors, each of which would need to be addressed for any comprehensive reform to succeed.

Procedural law that facilitates delay is a primary structural cause. The Code of Civil Procedure 1908, in its original form and as it operated in Bangladesh prior to the 2025 amendment, contained numerous provisions that created opportunities for tactical delay by sophisticated litigants and their lawyers. The rules on adjournments allowed courts to grant multiple postponements of hearings, in practice often as many as six or more per case, which extended litigation timelines dramatically. The rules on service of summons, which required physical delivery by court process servers, were frequently defeated by defendants who evaded service, requiring repeated attempts and further delays. The rules on interlocutory applications allowed parties to generate satellite litigation on procedural questions that could occupy courts for months or years while the principal dispute remained unresolved. The rules on appeals and revisions allowed every significant interlocutory order to be challenged before higher courts, creating cascading delays as subordinate courts awaited the outcomes of challenges to their procedural decisions.

The adversarial culture of the legal profession is a second major contributor. In the common law tradition, lawyers are officers of the court with obligations to facilitate the administration of justice, but they are also advocates with duties to their clients that can create incentives for procedural delay when delay serves the client's interests. In Bangladesh, the culture of legal practice has developed in ways that have exacerbated rather than mitigated the delay-generating potential of the adversarial system. Adjournments have been routinely granted as a professional courtesy among advocates, without adequate consideration of their impact on the litigants whose cases are thereby extended. Complex preliminary motions have been filed strategically to delay the hearing of the merits of cases where the moving party has a weak substantive position. Appeals have been taken against interlocutory orders as a matter of routine tactical practice rather than genuine grievance. And witness examination, which in many common law systems operates under strict time limits, proceeds in Bangladesh without effective judicial management of the pace of testimony.

Judicial case management, or its absence, is the third structural factor. In modern judicial administration theory, as pioneered in the United States by the Federal Rules of Civil Procedure of 1938 and developed extensively in subsequent decades, the judge is understood to be the active manager of the pace of litigation, not merely a passive umpire who rules on questions as they are raised. The shift from passive to active judicial case management, articulated in the Woolf Reforms in England and Wales that produced the Civil Procedure Rules 1998, and in analogous reforms in Canada, Australia, Singapore, and India, reflects the empirical finding that the greatest single variable in determining the length of litigation is the degree of judicial control

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over the pace of proceedings. In Bangladesh, judicial case management in this active sense has been largely absent. Judges have generally allowed litigation to proceed at the pace determined by the parties and their lawyers, without setting firm timelines, enforcing deadline compliance, or actively managing the complexity of proceedings to ensure that they reach hearing within a reasonable time.

Corruption is a fourth factor that, while difficult to measure precisely, is universally acknowledged by practitioners, litigants, scholars, and international observers as a significant contributor to judicial delay. Transparency International Bangladesh's national household surveys have consistently found that interactions with judicial services involve payments that are not legitimately authorized, at multiple stages of the litigation process including the filing of cases, the scheduling of hearings, the service of process, the recording of testimony, and the preparation of judgments. When litigants or lawyers must make informal payments to progress their cases through court bureaucracy, the economic cost of litigation is increased, the efficiency of court administration is distorted, and the incentive to delay is embedded into the system's operational structure, since delay creates additional opportunities for informal payments.

Physical infrastructure inadequacy is a fifth contributing factor. Many district court buildings in Bangladesh are inadequate for the volume of cases they are required to handle, with insufficient courtrooms, inadequate space for waiting litigants and their advocates, and poor facilities for the storage and retrieval of case records. The management of physical case files, which in most Bangladeshi courts are still maintained in paper form, creates its own delays and risks: files are lost, damaged, or rendered unavailable at the time of hearings, requiring postponements. Court libraries are frequently inadequate, making legal research difficult and time-consuming for judges and practitioners who lack access to electronic legal resources.

Section 88.2: The Jurisprudential Analysis of Delay as a Rights Violation

The philosophical and jurisprudential analysis of judicial delay is not merely instrumental, a matter of administrative efficiency. It implicates fundamental rights commitments that are embedded both in the Bangladesh Constitution and in international human rights law. The right to a fair trial within a reasonable time is recognized in Article 35(3) of the Constitution, which guarantees the right to a speedy and public trial. It is also protected by Article 14 of the International Covenant on Civil and Political Rights, which Bangladesh ratified in 2000, which provides that everyone shall be entitled to a fair and public hearing "without undue delay." The European Convention on Human Rights, while not directly applicable to Bangladesh, contains an analogous right in Article 6 whose interpretation by the European Court of Human Rights has generated a sophisticated jurisprudence on what constitutes "reasonable time" in civil and criminal proceedings that is instructive for any serious analysis of the Bangladesh situation.

The jurisprudential argument that delay constitutes a rights violation, rather than merely an administrative failing, has important implications for how the backlog problem should be understood and addressed. If delay is merely a management problem, then its solution is a matter of administrative reform: more judges, better procedures, more efficient case management. But if delay is a rights violation, then it has a different normative status. It is not merely an inefficiency to be improved but an injustice to be remedied. The state is not merely failing to deliver a service

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efficiently but is violating citizens' constitutional rights. This framing creates different obligations and different accountability mechanisms.

The Bangladesh Supreme Court has, in several cases, recognized delay as a constitutional problem rather than merely an administrative one. In Writ Petition cases involving prolonged pre-trial detention, the Court has held that detention that extends beyond what is justifiable by the circumstances of the case constitutes a violation of Article 33's guarantee against arbitrary detention and of Article 35's right to a speedy trial. In civil matters, the Court has recognized the principle that procedural delay that amounts to a denial of the substantive right being claimed is itself a constitutional violation. These judicial recognitions of the rights dimension of delay have not yet generated the kind of structural constitutional litigation, of the sort pioneered in Argentina and South Africa, that treats the backlog problem as a systemic constitutional failure requiring judicial management of the reform process. But the constitutional foundations for such litigation exist and have been used in specific contexts.

The theoretical framework most useful for understanding judicial delay as a systemic problem is provided by Amartya Sen's capabilities approach, developed in his monumental work The Idea of Justice (2009). Sen's insistence that justice must be evaluated not by the formal rules of a system but by the actual capabilities and freedoms of individuals in their concrete circumstances provides a powerful critical tool for analyzing the Bangladesh judicial system. A citizen whose legal right to enforce a contract, challenge a wrongful dismissal, contest a land encroachment, or seek compensation for personal injury is formally recognized by the law but in practice impossible to vindicate because the courts are so slow, expensive, and dysfunctional as to be effectively inaccessible is not experiencing justice in any meaningful sense, regardless of the formal recognition of the right.

Sen's distinction between the "niti" of formal institutional design and the "nyaya" of substantive justice actually experienced by real people is particularly apt. The Constitution of Bangladesh provides an impressive "niti" of rights and judicial structures. The "nyaya" experienced by the citizen who waits a decade for resolution of a land dispute, or who cannot afford the costs and delays of formal litigation and is forced to accept an unjust settlement, is very different. Any analysis of the Bangladesh court system that focuses exclusively on formal structures and ignores the substantive justice experienced by actual users of the system is missing the most important dimension of the problem.

Section 88.3: Historical Roots of the Delay Problem

The case backlog crisis did not emerge overnight. Its roots lie deep in the historical development of the legal system, in the colonial choices about judicial structure and procedure, and in the post-independence failures of institutional maintenance and investment that have allowed inherited problems to compound over decades.

The colonial legal system, as Part Two of this commentary documented, was not designed primarily for the efficient delivery of justice to a large, predominantly rural, and economically diverse population. It was designed to provide a framework within which the commercial interests of the colonial power could be protected, the taxation and revenue functions of the

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colonial state could be enforced, and the fundamental interests of the colonial administration could be defended against challenge. Within these priorities, the detailed procedural requirements of the Code of Civil Procedure 1908 and the Code of Criminal Procedure 1898 made sense as safeguards of the legitimacy of colonial justice, demonstrating that the colonial state operated according to recognizable legal rules rather than arbitrary executive power. But the elaborate procedural architecture of these codes was calibrated for a very different judicial system: one with fewer cases, a smaller population, a more professional bar, and a better-resourced court infrastructure.

When Bangladesh inherited these codes at independence in 1971, the mismatch between the procedural architecture and the actual capacity of the court system was already severe, and the dislocations of the Liberation War had further damaged the institutional fabric of the judiciary. The population of Bangladesh has grown from approximately 75 million at independence to over 170 million today. Economic development has brought a greatly enlarged volume of commercial, property, and contractual disputes that require judicial resolution. Social changes have generated an expanded demand for family law adjudication, and the development of employment law has created a large new category of labour disputes. All of these demand increases have pressed upon a court system whose judge numbers, physical infrastructure, and procedural framework have not expanded or modernized at anything approaching the rate required to meet them.

The political instability that has characterized Bangladesh's post-independence history, with its cycles of military rule, constitutional change, and political violence, has also contributed to the backlog problem by preventing the sustained, long-term institutional investment that improving a court system requires. Judicial reform is a generational project; it requires sustained political will, consistent resource allocation, and the accumulation of institutional expertise over many years. The political discontinuities of Bangladesh's post-independence history have repeatedly interrupted reform processes, reversed institutional changes made by previous governments, and substituted partisan judicial appointments for merit-based ones in ways that have degraded the quality of the judiciary without addressing the structural problems that produce the backlog.

CHAPTER EIGHTY-NINE: THE CODE OF CIVIL PROCEDURE 1908 AND ITS REFORM

Section 89.1: The Colonial Code and Its Structural Logic

The Code of Civil Procedure 1908, known to every Bangladeshi litigant, lawyer, and judge simply as "the CPC," is one of the most important and most discussed legislative instruments in the country's legal system. Its 158 sections and 51 Orders, together with the accumulated judicial interpretation of more than a century, constitute the framework within which virtually all civil litigation in Bangladesh is conducted. The CPC's principal drafter, Sir Walter Morgan, working within the framework of the Indian Law Commission's successive reports on civil procedure, aimed to create a comprehensive and logically organized code that would replace the varied and inconsistent procedural rules that had previously governed civil proceedings in different parts of British India.

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The philosophical basis of the original CPC reflects the tension, already noted in Part Two of this commentary, between the English common law's case-by-case development of procedural rules through judicial decision and the continental civil law's preference for comprehensive legislative codes. The CPC is a hybrid: it draws on English procedural principles, particularly in its adversarial structure and its emphasis on oral testimony, but it codifies those principles in a way that seeks to make the rules accessible and predictable. The Code's general architecture distinguishes between the jurisdiction of courts, the institution of suits, the summoning and attendance of parties and witnesses, the examination of parties and witnesses, the trial of suits, appeals and reviews, and the execution of decrees, moving systematically through the stages of civil litigation in a way that reflects a rational, if somewhat rigid, understanding of the litigation process.

The CPC's original structure has both significant strengths and significant weaknesses when evaluated against contemporary standards of judicial administration. Its strengths include its comprehensiveness, its attention to the protection of parties' procedural rights, and its provision for multiple levels of appellate review. Its weaknesses, which have become more pronounced as the distance between its colonial-era assumptions and contemporary Bangladeshi reality has grown, include its accommodation of delay through liberal adjournment provisions, its lack of any mechanism for judicial case management in the active sense that modern judicial administration requires, its paper-based procedures that assume the availability of functional postal services and process servers in ways that do not correspond to contemporary conditions, and its adversarial assumptions about the pace of proceedings that leave the control of litigation largely in the hands of the parties and their lawyers rather than the court.

The history of CPC reform in Bangladesh before 2025 is a history of incremental amendment that has addressed specific provisions without confronting the fundamental structural inadequacies of the code. The CPC (Amendment) Acts of 2003 and 2012 introduced some modifications to the adjournment rules, added provisions on alternative dispute resolution, and made adjustments to the fee schedule. These amendments were improvements at the margin but did not address the structural problems that produce delay. The Law Commission of Bangladesh has repeatedly recommended more fundamental reform, and a draft revised code has been in various stages of preparation for many years, but until 2025 the comprehensive reform of the CPC had not been achieved.

Section 89.2: The 2025 CPC Amendment: A Critical Analysis

The Code of Civil Procedure (Amendment) Ordinance 2025, which came into effect on 8 May 2025, represents the most significant reform of Bangladesh's civil procedure framework since independence. The Ordinance was promulgated by the interim government as part of the broader judicial reform programme and directly responds to recommendations that the Judicial Reform Commission had made over the preceding months.

The most significant innovation of the 2025 amendment is its integration of digital communication into the court process. The amendment to Order V Rule 9(3) authorizes courts to serve summons through electronic means including SMS, voice calls, email, and instant messaging platforms such as WhatsApp and Messenger. This change addresses one of the most

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persistently delay-generating aspects of the existing procedure: the difficulty of serving summons by physical delivery in a country where many defendants either cannot be located at the address provided or actively evade service. Electronic service, if properly implemented with appropriate verification mechanisms, can dramatically reduce the time between the filing of a suit and the effective notification of the defendant, enabling proceedings to move to the substantive stage far more quickly than the physical service system permitted.

The complementary amendment to Order VII Rule 1, which now requires plaintiffs to provide their mobile number, National Identity Card number, and where applicable an email address in the plaint, serves the dual purpose of facilitating electronic service and enabling court verification of litigant identity. The NID requirement is particularly significant because it links the court system to Bangladesh's increasingly comprehensive biometric identity infrastructure, creating the possibility of reliable identification of litigants and the detection of false identities used to frustrate legal process.

The reform of the adjournment rules is a second critical component of the 2025 amendment. The previous provisions allowed up to six adjournments in a single suit, a rule that was routinely exploited by sophisticated litigants to extend proceedings far beyond any justifiable period. The amended rules impose stricter limits on the number and grounds for adjournments, and require courts to provide specific reasons when adjournments are granted. This change, if properly enforced, would significantly reduce the most common mechanism for tactical delay in Bangladeshi civil litigation. However, the critical question is whether the courts will actually enforce the new limits. The history of similar reforms in other jurisdictions suggests that changing procedural rules is insufficient without changing the judicial culture that has accommodated delay. Judges who have spent their careers granting routine adjournments as a matter of professional courtesy will need specific training and institutional incentives to enforce the new strict limits against resistance from the bar.

The changes to execution proceedings represent a third significant reform. The execution of civil decrees, which should be the final stage of civil litigation but has in Bangladesh frequently become a second prolonged period of delay and procedural contest, has been the subject of specific amendments designed to streamline the process of translating judicial decisions into enforceable outcomes. The practical significance of this is enormous: a decree that cannot be enforced is merely a piece of paper, and the frequency with which successful litigants in Bangladesh have found their court victories pyrrhic because they could not enforce the resulting decrees has been a major source of public disillusionment with the court system.

The jurisprudential analysis of the 2025 CPC amendment situates it within the broader global movement of civil procedure reform that began with the Access to Justice Report commissioned by the Lord Chancellor in England and Wales and produced by Lord Woolf in 1995 and 1996. The Woolf Reforms, which produced the Civil Procedure Rules 1998 for England and Wales, were premised on the recognition that the existing adversarial system was "too expensive," "too slow," "too uncertain," and "too unequal" in its treatment of parties with different resources. Woolf's solution was to shift control of litigation from the parties to the court through active case management, to create a graduated system of procedural tracks calibrated to the value and complexity of the claim, to mandate early disclosure of evidence to reduce the element of

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surprise and encourage settlement, and to introduce proportionality as an explicit principle governing procedural choices.

The Woolf principles have subsequently been adopted, with appropriate local modifications, in a large number of common law jurisdictions. Singapore's civil procedure reforms of 2022, which introduced a simplified process for lower-value claims and strict case management with tight timelines and cost budgets, have produced measurable improvements in the speed and cost of litigation. India's civil procedure reforms, while less comprehensive than Woolf's, have introduced some active case management features and tightened the rules on adjournments and appeals from interlocutory orders. The Bangladesh 2025 amendment draws on this international reform experience, though it does not go as far as the most advanced reform models in its introduction of active judicial case management.

What the 2025 amendment does not address is the fundamental structural problem of insufficient judges. Digital summons and limited adjournments can improve the pace of proceedings, but if there are insufficient judges to hear the cases, the backlog will continue to grow. The amendment is a necessary but not sufficient condition for addressing the crisis of judicial delay. A comprehensive solution requires, in addition to procedural reform, a substantial increase in the number of judges, supported by genuine improvements in judicial remuneration, security of tenure, and working conditions that can attract and retain high-quality candidates for judicial office.

Section 89.3: Alternative Dispute Resolution and Its Relationship to the Formal Court System

The formal court system is not the only mechanism for resolving civil disputes in Bangladesh. A rich ecology of alternative dispute resolution mechanisms exists alongside and outside the formal courts, and any serious analysis of access to civil justice must grapple with these alternatives rather than focusing exclusively on the court system.

The most important of these alternatives is shalish, the indigenous village-level dispute resolution mechanism that has been a feature of rural Bengali social organization for centuries and that continues to resolve an enormous proportion of disputes in rural Bangladesh. Shalish, in its traditional form, involves the convening of a gathering of respected community members, typically including village elders, local government representatives, and sometimes religious leaders, who hear the parties to a dispute and attempt to reach a consensus resolution. The resolution is not legally binding in the formal sense but is usually followed because of the social pressure exerted by the community and the authority of the shalish participants. Shalish is fast, cheap, and accessible to people who cannot afford formal litigation; it can typically resolve a dispute in days or weeks rather than the years that formal court proceedings require.

The jurisprudential analysis of shalish raises important questions about the legitimacy of dispute resolution that operates outside the formal legal system. Hart's concept of a legal system as a set of rules united by a rule of recognition would suggest that shalish resolutions are not legally valid, since they are not made by organs recognized as law-making or law-applying under any secondary rule. Fuller's procedural morality criteria would find some shalish proceedings

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deficient, particularly those that fail to give adequate hearing to the weaker party or that are dominated by considerations of local power rather than principled application of norms. And from a feminist jurisprudential perspective, following the work of scholars like Martha Nussbaum and Ratna Kapur on the specific vulnerabilities of women in informal dispute resolution, shalish raises serious concerns about its treatment of women in disputes involving domestic violence, divorce, land rights, and inheritance, where community norms and power structures frequently disadvantage women regardless of their formal legal entitlements.

The Bangladesh government has sought, through legislation and programme initiatives, to formalize and regulate shalish as a complement to the formal court system. The Village Courts Act 2006 (amended in 2013) established formal Village Courts at the union parishad (local government) level with jurisdiction to hear petty civil and criminal matters up to a specified monetary limit. The Village Courts are presided over by the Chairman of the Union Parishad, with two panel members selected by each of the parties, and are intended to provide a cheap, fast, and accessible alternative to the formal district courts for small disputes. The government, with support from UNDP and other development partners, has invested in expanding and strengthening the Village Courts system over the past decade, with some evidence of improved performance in terms of case disposal rates and litigant satisfaction.

The Labour Court system represents a second important alternative dispute resolution mechanism, though one that is more formal than shalish. The Bangladesh Labour Act 2006 provides for the resolution of individual labour disputes through Labour Courts and for collective labour disputes through the Conciliation, Arbitration, and Adjudication procedures of Chapter XIV. The formal mediation requirement for individual labour disputes, which must go through a conciliation process before any court proceedings can be initiated, has produced some improvement in the resolution of employment disputes without formal adjudication. But the Labour Courts are themselves overloaded and slow, and the practical availability of the formal labour dispute resolution system to workers in the informal economy, which employs the majority of Bangladesh's working population, is very limited.

The Code of Civil Procedure itself, in its provisions on arbitration and reference to alternative dispute resolution that were introduced by the 2003 amendment, creates a basis for court-annexed mediation and arbitration in civil suits. Section 89A allows courts to refer disputes for mediation at any stage of the proceedings, and Section 89B provides for reference to arbitration. The Arbitration Act 2001, which governs private arbitration proceedings in Bangladesh, has brought Bangladesh's arbitration law broadly into conformity with the UNCITRAL Model Law on International Commercial Arbitration, making Bangladesh a more hospitable forum for international commercial arbitration. The Alternative Dispute Resolution Act 2004 provides a further legislative framework for mediation and other non-adjudicative dispute resolution mechanisms.

The uptake of formal ADR mechanisms in Bangladesh civil litigation has been limited despite this legislative framework. The reasons are instructive for the broader analysis of judicial reform. Courts have generally not made active use of their power to refer cases to mediation, partly because the referral is perceived as delaying, rather than expediting, the eventual resolution of the dispute; partly because the culture of the legal profession is adversarial and unfamiliar with

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facilitative techniques; and partly because the infrastructure for quality mediation services outside the court system is underdeveloped. Private arbitration is used in significant commercial transactions, particularly those involving international parties who value the confidentiality and enforceability of arbitration awards, but it is not accessible to the vast majority of Bangladeshi litigants whose disputes do not involve the sums that make private arbitration economically rational.

CHAPTER NINETY: THE CODE OF CRIMINAL PROCEDURE 1898 AND CRIMINAL JUSTICE REFORM

Section 90.1: The Structural Architecture of Criminal Procedure

The Code of Criminal Procedure 1898, another monument of the colonial codification effort examined in Part Two, governs the entire process of criminal justice administration in Bangladesh from the registration of first information reports through investigation, arrest, remand, charging, trial, and appeal. Like its civil counterpart, the CrPC is a comprehensive and logically organized code that reflects the procedural principles of the English common law tradition as adapted for the conditions of British India, and like the CPC it has accumulated more than a century of judicial interpretation that has both refined and complicated its application.

The CrPC's structural architecture reflects the constitutional and legal philosophy of the colonial state's approach to criminal justice. The code divides criminal matters between cognizable and non-cognizable offences, with police having the power to arrest without warrant only for cognizable offences, a distinction of fundamental importance for the protection of individual liberty. It establishes a hierarchy of magistrates with graduated jurisdiction based on the gravity of the offence and the maximum sentence that the magistrate may impose, reflecting a rational allocation of judicial authority. It provides detailed rules on the investigation of offences, the examination of witnesses, the recording of confessions, the commitment of accused persons to trial, and the conduct of trials and appeals.

The CrPC's provisions on remand and pre-trial detention are among the most consequential, and the most problematic, aspects of the criminal justice system. Section 167, which allows the police to detain a suspect in custody while an investigation continues, subject to judicial authorisation at fourteen-day intervals for a total period not exceeding sixty days for serious offences and thirty days for less serious ones, has been chronically abused in Bangladeshi practice. The judicial magistrates who are required to authorize remand have in many cases functioned as rubber-stampers of police requests rather than as genuine gatekeepers of liberty, granting remand applications without adequate scrutiny of whether the investigation genuinely requires the continued detention of the suspect. The result is that pre-trial detention in Bangladesh has often extended far beyond what the investigation requires, amounting in practice to a form of preventive detention or punishment before conviction that is incompatible with the presumption of innocence.

The Special Powers Act 1974, which allows detention without trial for up to six months (extendable virtually indefinitely) on vague grounds of "prejudicing the sovereignty and integrity of Bangladesh" or "maintaining public order," has been used repeatedly by successive

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governments as an instrument of political detention that bypasses the procedural protections of the CrPC entirely. Its continuing existence in Bangladesh's statute book is a standing challenge to the constitutional guarantee of personal liberty under Article 32 and to the principle that detention requires judicial authorization based on specific evidence of wrongdoing rather than executive suspicion.

Section 90.2: The CrPC (Second Amendment) Ordinance 2025

The Code of Criminal Procedure (Second Amendment) Ordinance 2025, gazetted on 8 September 2025, introduced significant reforms to the criminal procedure framework. The amendment reflects the Judicial Reform Commission's recommendations on accountability and access to justice in criminal proceedings and responds to some of the most persistently criticized aspects of the existing system.

The amendment introduces specific provisions aimed at strengthening the accountability of the police investigation function, which has been a critical weak point in Bangladesh's criminal justice system. The reforms impose new requirements on the quality and documentation of police investigations, create mechanisms for judicial supervision of investigations that extend beyond the routine remand authorization process, and introduce time limits on the completion of investigations in specified categories of offences.

The amendment also addresses the problem of witness protection, which has been identified throughout Bangladesh's criminal justice literature as a fundamental obstacle to effective prosecution. The phenomenon of witness intimidation, withdrawal, and disappearance is endemic in serious criminal cases in Bangladesh, undermining convictions in cases where the police investigation has produced adequate evidence but the testimony of witnesses at trial fails to deliver the conviction that the evidence warrants. The 2025 amendment introduces provisions for witness protection measures, including the use of screens and voice distortion in the examination of vulnerable witnesses, the reception of pre-recorded testimony in appropriate cases, and specific criminal offences for witness intimidation.

The reform of the bail system is a third significant component of the 2025 amendment. The provision of bail in criminal cases is governed by Sections 496 to 502 of the CrPC, which create a distinction between bailable offences (where bail is a right) and non-bailable offences (where bail is a discretion exercised by the court). The discretion on bail in non-bailable offences has in Bangladesh been exercised inconsistently, with wealthy defendants often securing bail that is denied to poorer defendants in similar circumstances, and with political considerations frequently influencing bail decisions in politically sensitive cases. The 2025 amendment introduces structured criteria for the exercise of the bail discretion, requiring courts to specify the reasons for refusing bail and creating a more transparent and accountable framework for bail decision-making.

Section 90.3: The Investigation Function and Forensic Reform

The quality of criminal investigation is the foundation on which the entire criminal justice edifice rests. A court that must adjudicate guilt or innocence on the basis of an inadequate investigation

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is in an impossible position: it must either convict on insufficient evidence, which risks punishing the innocent, or acquit because the evidence is insufficient, which may allow the guilty to escape accountability. In Bangladesh, the chronic inadequacy of criminal investigation is one of the most persistently documented problems in the criminal justice literature, and it is one that has been resistant to reform because it requires sustained institutional investment and cultural change in the police service that goes well beyond changes in legislative text.

The problems with police investigation in Bangladesh are multiple and well-documented. The police force operates under a Police Act that dates from 1861, another colonial-era instrument designed for very different conditions and very different policing needs than contemporary Bangladesh faces. The investigative capacity of the police is severely limited by inadequate forensic infrastructure: Bangladesh has very few functional forensic laboratories, and the capacity to conduct DNA analysis, digital forensics, and other modern investigative techniques is extremely limited. The training of investigating officers in evidence collection, chain of custody requirements, and the preparation of case files for prosecution is inadequate relative to the demands placed upon them. And the institutional culture of the police, which has been documented as highly susceptible to political influence and to corrupt relationships with powerful interests, creates conditions in which investigations may be oriented toward producing a desired outcome rather than establishing the truth of what occurred.

The Judicial Reform Commission's recommendations on forensic capacity represent a recognition that criminal justice reform cannot be confined to the courts alone. The establishment of regional forensic laboratories, the introduction of mandatory digital evidence protocols, and the reform of the investigator training curriculum are all measures that fall outside the strictly judicial sphere but that are essential preconditions for the effective functioning of the criminal courts. The 2025 amendment's provisions on investigation accountability are meaningful only if the investigation function is adequately resourced and appropriately trained. Without these underlying conditions, procedural requirements imposed on investigating officers will be met on paper but not in substance.

The philosophical dimension of this discussion connects to the jurisprudential literature on proof and truth in criminal adjudication. The utilitarian tradition, following Bentham, demands that the criminal justice system be organized to maximize the accurate determination of guilt, which requires both adequate investigation and reliable rules of evidence. The Kantian tradition, emphasizing the dignity of the accused, demands procedural protections that respect the accused's status as a rational person whose guilt must be established by fair means and not assumed. The evidential theory of contemporary criminal law, developed by scholars like William Twining in his landmark Rethinking Evidence (2006), demands a systematic approach to proof that draws on the best available epistemic tools, including but not limited to formal rules of evidence, to evaluate the weight and credibility of different kinds of evidence. All of these theoretical frameworks converge on the conclusion that the quality of criminal investigation is not a marginal matter but a fundamental determinant of the justice or injustice of criminal outcomes.

CHAPTER NINETY-ONE: JUDICIAL INDEPENDENCE: CONSTITUTIONAL DOCTRINE AND INSTITUTIONAL REALITY

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Section 91.1: The Doctrine of Judicial Independence in Comparative Perspective

Judicial independence is not a unitary concept but a complex of related ideas whose precise content varies significantly across different constitutional traditions and jurisprudential frameworks. Understanding the different dimensions of judicial independence is essential for evaluating both the deficiencies of Bangladesh's current system and the adequacy of the reforms that have been introduced.

The most fundamental dimension of judicial independence is what scholars call "adjudicative independence," the independence of the individual judge in deciding the particular case before her. Adjudicative independence requires that the judge's decision be based on her honest assessment of the law and facts as presented, without fear of reprisal for decisions that displease powerful interests, without hope of reward for decisions that favor those in authority, and without pressure from other judges, including more senior judges in the hierarchy, to reach particular outcomes. This dimension of independence is protected primarily by security of tenure, which insulates the judge from the threat of removal for decisions that displease the government, and by adequate financial remuneration, which insulates the judge from financial dependence on litigants or other interested parties.

A second dimension is what might be called "institutional independence," the independence of the judiciary as a whole from the other branches of government. Institutional independence requires that the judiciary control its own administration, appointments, discipline, and budget to a degree sufficient to prevent the executive from using administrative leverage to shape judicial behavior. This is the dimension of independence addressed by the Masdar Hossain judgment and by the Supreme Court Secretariat Ordinance of 2025, both of which address the structural dependence of the judiciary on the executive for its administrative functions.

A third dimension is what Shimon Shetreet and Christopher Forsyth, in their seminal work The Culture of Judicial Independence (2012), call "substantive independence," the judiciary's freedom to develop the law in accordance with its best understanding of legal principle without being constrained by deference to political preferences. Substantive independence is more difficult to guarantee institutionally than adjudicative or structural independence, because it is ultimately a matter of judicial culture and intellectual commitment rather than institutional arrangement. A judiciary whose members have been selected through patronage processes that reward political loyalty rather than intellectual quality and moral integrity will tend toward deference to political power in its substantive legal development even if its formal institutional independence is fully secured.

The comparative analysis of judicial independence models across different constitutional systems reveals a wide range of institutional arrangements for securing these various dimensions of independence. In the United Kingdom, adjudicative independence is protected by the constitutional convention of the independence of the judiciary, which is not formally legally entrenched but is practically robust because of its long historical roots and the strong professional culture of the bar and bench. Institutional independence is secured by the Constitutional Reform Act 2005, which created the Judicial Appointments Commission (removing appointment powers from the Lord Chancellor), the Supreme Court as a fully

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independent institution (removing the law lords from the House of Lords), and the Lord Chief Justice as head of the judiciary in England and Wales (removing that function from the Lord Chancellor). The United States model relies primarily on constitutional entrenchment, with Article III judges having life tenure and undiminishable salaries, and a politically structured appointment process that creates a form of democratic legitimacy for the judiciary that is absent in many other systems.

Bangladesh's constitutional framework, as analyzed in Section 87.1 above, formally provides for both adjudicative and institutional independence, but the implementation of that framework has been persistently inadequate. The appointment process has been subject to political influence rather than merit-based selection. Security of tenure, while formally guaranteed, has been undermined by the use of administrative pressures, including threats to postings and promotions, to influence judicial behavior. And the institutional administrative dependence on the executive has allowed the government to exercise practical leverage over judicial careers even without formal interference in adjudicative decisions.

Section 91.2: The Chief Justice's Reform Roadmap: An Institutional Analysis

Chief Justice Syed Refaat Ahmed's Reform Roadmap, announced on 21 September 2024, represents the most ambitious and comprehensive programme of judicial reform announced by any Chief Justice in Bangladesh's post-independence history. The Roadmap addresses all three dimensions of judicial independence identified above, as well as the efficiency and access-to-justice dimensions of judicial performance that are its necessary complements. Understanding the Roadmap's content, its implementation status, and its limitations is essential for any comprehensive analysis of the current state and future trajectory of Bangladesh's court system.

The Roadmap's twelve-point directive on transparency in judicial services, issued on 18 September 2024, was the first element of the reform programme to be implemented. The directives include requirements for the timely scheduling of hearings, prohibition on unnecessary adjournments, requirements for the recording of reasons when adjournments are granted, standards for the management of case files, and prohibitions on ex parte communications with parties or advocates outside the formal hearing process. These directives were issued directly by the Chief Justice to all levels of the subordinate judiciary, reflecting his assessment that immediate administrative action was possible even before the legislative changes required for comprehensive reform could be implemented.

The Supreme Judicial Appointment Council established under the Supreme Court Judges Appointment Ordinance 2025 represents the most important reform of the judicial appointment process in Bangladesh's history. The Council, chaired by the Chief Justice, includes senior judges of the Appellate Division and the High Court Division and operates through a structured process of candidate evaluation that is intended to ensure that appointments are based on professional merit rather than political patronage. Appointments to both divisions of the Supreme Court have been made under this process since the Ordinance was enacted in January 2025, creating an initial precedent for merit-based appointment that could, if the system is maintained, gradually transform the quality and culture of the judiciary.

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The paper-free proceedings initiative, launched in the Company Bench of the High Court Division in early 2025 and expanded to additional benches on 20 July 2025, represents a specific application of the broader digitalisation agenda to the day-to-day conduct of court proceedings. Under this initiative, all submissions and documents in the designated benches are filed electronically, heard electronically, and recorded electronically, eliminating the delays, losses, and inefficiencies associated with paper file management. The Chief Justice has expressed the intention to extend paper-free proceedings to all benches of the Supreme Court and eventually to the subordinate courts, a transformation that would fundamentally change the operational infrastructure of the judicial system.

The 24/7 judicial helpline, the monitoring committees led by High Court judges to oversee case disposal in the lower courts, and the revised posting and transfer guidelines for district court judges are all elements of the Reform Roadmap that address the day-to-day operational functioning of the judiciary without requiring major legislative change. Their collective significance is in demonstrating that Chief Justice Ahmed's reform programme is not merely a statement of aspirations but a sustained programme of institutional change that is being implemented at multiple levels simultaneously.

The critical questions about the Reform Roadmap concern its sustainability and its depth. The Roadmap is, at this point, very largely a personal initiative of the current Chief Justice. Its institutional durability depends on whether the reforms he has introduced are embedded in formal legal and institutional structures that will survive his eventual departure from office. The risk of personal dependence is acute in a context where institutional reform is driven primarily by the energy and commitment of an individual leader rather than by structural changes that constrain and guide the behavior of successors. This is precisely why the legislative consolidation of the reforms through parliamentary ratification of the key ordinances is so important and why the parliamentary committee's recommendation to allow those ordinances to lapse is so deeply concerning.

Section 91.3: The Writ Jurisdiction and Judicial Review as Protectors of Independence

The High Court Division's writ jurisdiction under Article 102 of the Constitution is not merely a mechanism for protecting citizens' rights against government action; it is also, in a very important sense, a mechanism for protecting the independence of the court system itself. When the High Court Division, in Writ Petition No. 3936 of 2025, directed the government to establish a separate secretariat for the judiciary and found defects in the constitutional appointment scheme, it was using the writ jurisdiction to enforce the structural constitutional requirements for judicial independence that the Masdar Hossain judgment had identified and that successive governments had failed adequately to implement.

This use of writ jurisdiction to enforce structural constitutional requirements relating to the court system itself raises a genuinely complex jurisprudential question about the limits of judicial self-interest. Courts are not disinterested adjudicators when they are deciding cases about the powers and autonomy of courts: they are parties in interest, and their decisions about their own institutional powers must be evaluated with some attention to this structural bias. The concern is not that the High Court Division's direction to establish a judicial secretariat was wrong as a

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matter of constitutional law; the analysis above suggests that it was indeed constitutionally required. The concern is the theoretical one about the institutional dynamics of courts deciding cases about their own powers and resources.

The jurisprudential literature on this question is divided. Alexander Bickel's concept of the "counter-majoritarian difficulty," which identifies the tension between judicial review and democratic self-government, is implicitly extended by some scholars to include the problem of courts exercising review over arrangements that relate to their own institutional powers. Jeremy Waldron's critique of judicial review, developed in Law and Disagreement (1999) and subsequent work, suggests that the legitimacy of judicial decisions about contested political questions requires some degree of detachment from the direct institutional interests of the deciding body. But the counter-argument, pressed most forcefully by Owen Fiss in The Law As It Could Be (2003) and by Cass Sunstein in various contributions to constitutional theory, is that some rights and structural principles are too fundamental to be left to the discretion of the political branches, which have structural incentives to interpret those principles in ways that favor their own interests. The independence of the judiciary is paradigmatically such a principle, and the courts' willingness to enforce it against executive resistance is not a form of self-interested judicial aggrandizement but the discharge of a constitutional responsibility.

CHAPTER NINETY-TWO: SPECIALIZED COURTS, COMMERCIAL JUSTICE, AND ENVIRONMENTAL ADJUDICATION

Section 92.1: The Commercial Court and the Needs of Economic Development

The quality of commercial justice, the speed, reliability, and accessibility of courts that resolve business disputes, is a critical determinant of economic development. The World Bank's Doing Business indicators, while methodologically contested in some respects, have consistently documented the relationship between the quality of contract enforcement and the volume of business investment and economic activity. Bangladesh's performance on the contract enforcement indicator has historically been poor, reflecting the long delays and high costs of commercial litigation in the ordinary civil courts.

The case for a specialized commercial court in Bangladesh rests on several distinct grounds. First, commercial disputes often involve technical and specialized questions, relating to financial instruments, accounting practices, shipping, insurance, and intellectual property, that require specialized judicial expertise that generalist district court judges may not possess. Second, the pace at which commercial disputes need to be resolved, which is determined by the pace of commercial life rather than the administrative convenience of the court system, is incompatible with the delays of the ordinary civil court system. A business dispute that requires four or five years to resolve through the ordinary courts may have destroyed both businesses by the time judgment is delivered. Third, the procedures appropriate for commercial disputes may differ from those suitable for ordinary civil litigation: commercial parties are typically sophisticated, often legally represented, and capable of managing their own discovery and evidence without the detailed procedural supervision that individual litigants may require.

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Bangladesh has taken some steps toward specialized commercial adjudication through the Artha Rin Adalat system, which hears loan recovery cases filed by financial institutions, and through the specialized chambers of the High Court Division that handle company matters. But a comprehensive commercial court of the kind established in England and Wales by the Judicature Acts, in Singapore through the Singapore International Commercial Court, and in various other jurisdictions, does not yet exist in Bangladesh. The Law Commission has recommended the establishment of such a court, and the Judicial Reform Commission endorsed this recommendation. The implementation of this reform remains outstanding.

The philosophical basis for specialized commercial courts in the common law tradition connects to the long history of the Law Merchant, the lex mercatoria, which was a transnational legal order governing commercial relationships among merchants before the period of codification and nationalization of commercial law in the eighteenth and nineteenth centuries. The lex mercatoria, as described by Clive Schmitthoff in his foundational article "International Business Law: A New Law Merchant" (1961) and elaborated by subsequent scholars, was administered by merchant courts composed of merchants themselves who understood commercial practice and could apply the norms of that practice in ways that the general courts, composed of lawyers trained in the civil or common law, could not. The contemporary movement toward specialized commercial courts and international commercial arbitration as alternatives to general court litigation reflects a similar conviction: that commercial disputes require adjudicators who understand commercial practice and who can apply appropriate norms to those disputes with speed and expertise.

Section 92.2: Environmental Courts and Bangladesh's Specific Vulnerability

Bangladesh's extraordinary environmental vulnerability, particularly its exposure to the effects of climate change in the form of rising sea levels, more intense cyclones, increased flooding, and threats to agricultural productivity, creates a powerful argument for specialized environmental courts that can adjudicate disputes about environmental rights and duties with the expertise and speed that the subject demands.

The constitutional basis for environmental protection in Bangladesh was established by the High Court Division's pathbreaking judgment in Dr. Mohiuddin Farooque v. Bangladesh and Others (1997), in which the Court recognized a constitutional right to a healthy environment as part of the right to life under Article 31 of the Constitution, and held that the government had a constitutional obligation to protect the environment against degradation. This judgment drew on the growing international jurisprudence on environmental rights, including the Indian Supreme Court's celebrated environmental decisions, and established Bangladesh as part of the global movement toward constitutionalization of environmental protection.

The Environment Court Act 2000 established Environmental Courts at the district level with jurisdiction to try offences under the Environment Conservation Act 1995 and other environmental legislation. However, the Environmental Courts have been widely criticized as inadequate for Bangladesh's environmental adjudication needs. They lack the scientific and technical expertise required to evaluate complex environmental evidence. Their jurisdiction is primarily criminal rather than civil, limiting their ability to provide injunctive relief against

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ongoing environmental damage. Their appellate structure routes environmental cases through the general criminal appeals framework rather than providing a specialized environmental appellate body with appropriate expertise. And their relationship to the regulatory framework of the Department of Environment is not clearly defined, creating coordination problems between enforcement and adjudication.

The proposal for a specialized Environmental and Climate Tribunal with broad jurisdiction over both civil and criminal environmental matters, specialized judges with scientific training or scientific assessors, power to grant injunctive and mandatory relief, and specialized appellate review, has been supported by environmental law scholars and advocacy organizations for many years. In the context of Bangladesh's ratification of the Paris Agreement and its nationally determined contributions to greenhouse gas reduction, and in the context of the increasing frequency and severity of climate-related disasters that Bangladesh is experiencing, the case for specialized environmental adjudication is stronger than it has ever been.

The jurisprudential framework for environmental adjudication draws on the rapidly developing field of climate litigation, which has produced significant decisions in jurisdictions including the Netherlands (the Urgenda Foundation case of 2019, in which the Dutch Supreme Court held that the Dutch state had a duty of care to reduce greenhouse gas emissions to a level consistent with human rights protection), Pakistan (the Lahore High Court Green Bench's Asghar Leghari judgment of 2015, which directed the government to implement its National Climate Change Policy), and Colombia (the Colombian Supreme Court's 2018 judgment on deforestation in the Amazon). These cases collectively represent the emergence of a new jurisprudential category of climate rights litigation that draws on constitutional rights frameworks to impose substantive obligations on states to address climate change.

Bangladesh's acute climate vulnerability, combined with its status as one of the world's smallest per-capita contributors to greenhouse gas emissions, creates a particularly compelling case for participation in the global movement of climate litigation, both domestically and internationally. The International Court of Justice's Advisory Opinion on the Obligations of States in respect of Climate Change, requested by the UN General Assembly and anticipated in 2025, will provide an important new source of international legal standards against which Bangladesh can evaluate its own climate action and pursue its claims against the states most responsible for the emissions that threaten its existence.

Section 92.3: The Family Court System and the Reform of Personal Law Adjudication

The family court system in Bangladesh operates at the intersection of the formal court system, the personal law applicable to different religious communities, and the deep social structures of gender, family, and community that shape the lived experience of family life in Bangladesh. As of March 2025, there were over 74,000 pending cases in family courts nationwide, including more than 5,000 cases that had been pending for over five years, a backlog that represents an immense social cost in terms of unresolved family disputes, protracted separation proceedings, and delayed enforcement of maintenance and custody orders.

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The Family Courts Ordinance 1985, which established the current family court system, governs civil family matters including divorce, dower, maintenance, restitution of conjugal rights, and custody of children. The Family Courts operate under a simplified procedure designed to be more accessible than the full CPC procedure, but the volume of cases and the emotional complexity of family disputes have generated delays that are particularly harmful given the vulnerable populations, especially women and children, affected by family court proceedings.

The reform of the family court system requires attention to both procedural and substantive dimensions. On the procedural side, the case management reforms recommended for the general civil courts apply with equal force to family courts: more judges, stricter time limits, active judicial case management, and the effective use of mediation for disputes that are amenable to facilitative resolution. The experience of specialized family courts in England and Wales, Canada, and Australia suggests that family court proceedings can be both faster and more conducive to the long-term interests of the parties, particularly the children, when they are managed by judges with specialized training in family dynamics and child psychology and when they are conducted with an ethos of problem-solving rather than adversarial combat.

On the substantive side, the reform of the family court system requires engagement with the deeply controversial question of the personal law applicable to different religious communities. Bangladesh applies the Muslim Personal Law (Shariat) Application Act 1937 to Muslim citizens in matters of family law, the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946 and customary Hindu law to Hindu citizens, and the Christian Marriage Act 1872 to Christian citizens, in a framework of communal personal law that was established by the colonial state and has been maintained largely unchanged since independence. This framework creates differential rights and obligations based on religious community membership that are in tension with the constitutional guarantee of equality before the law in Article 27.

The most persistently controversial aspect of the personal law system in Bangladesh is the position of Muslim women in family law. The Muslim Family Laws Ordinance 1961, which applies in Bangladesh by virtue of its enactment during the period of Pakistani administration, introduced significant reforms to classical Hanafi family law including the requirement of registration of marriages, restrictions on polygamy, and the right of women to divorce through khul (divorce initiated by the wife). However, the substantive position of Muslim women in relation to inheritance, maintenance, and custody remains significantly less favorable than that of men under the existing legal framework, and the gap between formal legal rights and their practical enforceability is particularly acute for women in family law matters.

The feminist jurisprudential analysis of Bangladesh's personal law system draws on the body of scholarship developed by scholars including Ziba Mir-Hosseini, whose work on Islamic family law reform across multiple Muslim-majority contexts provides the most sophisticated analysis of the relationship between classical Islamic jurisprudence and contemporary gender equality norms; Amira Sonbol, whose comparative historical analysis of Islamic family law challenges the assumption that classical fiqh represents a fixed and determinate set of rules rather than a diverse and evolving body of jurisprudential reasoning; and Ratna Kapur, whose critical perspective on the limits of formal legal rights as tools for women's empowerment is directly applicable to the Bangladeshi context. The collective lesson of this scholarship is that the reform

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of women's rights in family law requires engagement with both the jurisprudential tradition and the social conditions that determine whether formal rights are practically exercisable, and that reform strategies that ignore either of these dimensions are likely to be ineffective.

CHAPTER NINETY-THREE: THE DIGITALISATION OF JUSTICE AND THE TECHNOLOGY AGENDA

Section 93.1: The E-Judiciary Initiative and Its Theoretical Foundations

The digitalisation of court processes is one of the most actively discussed and actively implemented dimensions of Bangladesh's current judicial reform programme. The Chief Justice's Reform Roadmap identified digital innovation as a central pillar of judicial transformation, and multiple concrete initiatives have been implemented or piloted in the period since September 2024. Understanding these initiatives, their theoretical foundations, their practical challenges, and their limits, is essential for any serious analysis of the future of Bangladesh's court system.

The theoretical foundations for court digitalisation draw on several intellectual traditions. The access to justice tradition, tracing from Mauro Cappelletti and Bryant Garth's foundational comparative study Access to Justice (1978-1979) through the contemporary work of scholars like Richard Susskind in Online Courts and the Future of Justice (2019), argues that digital technology has the potential to transform access to legal services by reducing the geographic, financial, and informational barriers that have historically excluded many citizens from the formal justice system. Susskind's vision of "online courts," in which disputes are resolved through asynchronous digital interactions rather than physical attendance at courtrooms, is particularly relevant to Bangladesh's conditions: a country where many citizens live at a great distance from courts, where the cost of travel and lost income from court attendance is a significant barrier to litigation, and where digital communication infrastructure has developed rapidly in recent years.

The information technology tradition of e-government, developed through the work of scholars like Darrell West, Jane Fountain, and Helen Margetts, provides a second theoretical framework. This tradition emphasizes the potential of digital technology to improve the efficiency, transparency, and accountability of government service delivery, including judicial services. Electronic filing, digital case management, online payment of court fees, digital service of process, and the publication of judgments on searchable online databases are all applications of e-government principles to the court context that can produce measurable improvements in the speed and quality of service delivery without changing the substantive legal framework.

The legal technology tradition, which has developed rapidly since the mid-2010s with the emergence of artificial intelligence applications to legal research, document review, and predictive analytics, provides a third framework. The potential applications of AI to court processes include predictive analytics that can identify cases likely to settle and refer them to mediation, document review algorithms that can identify relevant evidence in complex cases more quickly than human review, natural language processing tools that can analyze judgments to identify inconsistencies in the application of legal standards, and machine translation tools that

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can make legal materials accessible to speakers of languages other than the official language of the court.

These theoretical frameworks are not uniformly applicable to Bangladesh's conditions, and a critical jurisprudential analysis must identify both their potential and their limits in the specific social, economic, and institutional context of Bangladesh.

Section 93.2: Current Digital Initiatives and Their Implementation

The paper-free proceedings initiative, launched in the Company Bench of the High Court Division in early 2025 and expanded to additional benches in July 2025, is the most visible symbol of the judicial digitalisation programme. Under this initiative, advocates file submissions electronically through a digital platform developed under the supervision of the Supreme Court, hearings are conducted with reference to digital documents rather than physical files, and records are maintained in digital form. The practical challenges of implementing this system, including the need for reliable internet connectivity in court buildings, the provision of appropriate devices for judges and court staff, the training of advocates unfamiliar with digital filing systems, and the protection of digital records against loss and unauthorized access, are substantial but appear to have been substantially managed in the initial pilot benches.

The digital case management system being implemented in the subordinate courts represents a more challenging initiative. The subordinate courts serve a much larger volume of cases than the Supreme Court, operate in physical environments that are less well-resourced, and serve a bar whose members are less technologically sophisticated than the advocates who practice before the High Court Division. The case management system needs to be designed with usability by users of varying digital literacy as a primary requirement, and needs to be supported by adequate training programmes and technical support infrastructure throughout the district court system.

The digitisation of summons service, authorized by the 2025 CPC amendment, is perhaps the reform with the most immediate practical significance for the speed of civil litigation. The requirement that plaintiffs provide mobile numbers and NID numbers facilitates electronic service that can be verified against the national identity database, addressing the fundamental problem of ensuring that defendants actually receive notice of proceedings against them in a system where physical service has been chronically unreliable.

The legal aid service's digital dimension, including the 24/7 judicial helpline launched by the Supreme Court and the digital legal aid services supported by UNDP, represents an application of digital technology specifically targeted at improving access to justice for citizens who have historically been excluded from the formal legal system by informational and economic barriers. The helpline provides information about legal rights and procedures to citizens who would otherwise have no way of accessing this information without engaging a lawyer, and the digital legal aid services extend the reach of the legal aid system to citizens who cannot physically access a legal aid office.

Section 93.3: The Limits and Risks of Digital Justice

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The theoretical analysis of digital justice must grapple honestly with the limits and risks of the technology agenda, which is as important as identifying its potential benefits. A critical perspective on court digitalisation identifies several significant concerns that should shape the design and implementation of digital initiatives in Bangladesh.

The digital divide is the first and most fundamental concern. Bangladesh's rapid expansion of mobile phone penetration and internet connectivity has been remarkable, but it remains the case that large segments of the population, particularly the rural poor, the elderly, and women in traditional communities, have limited access to and limited familiarity with digital technology. A court system that assumes digital literacy and digital access will exclude these groups unless specific provisions are made for non-digital alternatives and for assistance to digital non-users. The democratic access to justice mandate requires that digital innovation be designed as an addition to, rather than a replacement for, non-digital access pathways.

Data privacy and security is a second serious concern. The implementation of digital case management systems, electronic filing, and biometric identity verification in court processes creates substantial repositories of sensitive personal data that are attractive targets for unauthorized access and that require robust cybersecurity protections. Bangladesh's data protection framework is still in development: the Digital Security Act 2018 (replaced by the Cyber Security Act 2023) contained significant provisions on cybercrime but did not establish a comprehensive data protection regime, and the Personal Data Protection Act that has been discussed for several years has not yet been enacted. Courts that collect, store, and transmit sensitive personal information, including litigants' contact details, medical records, financial information, and case histories, have a responsibility to protect that information that cannot be discharged without a robust legal and technical framework for data protection.

The risk of algorithmic bias is a third concern, particularly relevant to the potential use of AI in predictive analytics and case management. Algorithmic tools that are trained on historical case data may incorporate and perpetuate the biases, explicit and implicit, that have characterized decision-making in the historical system. If the historical court system has treated certain groups, including the poor, women, religious and ethnic minorities, and political dissidents, less favorably than others, algorithmic tools trained on its decisions may incorporate these biases into their predictions and recommendations. The use of such tools in bail decisions, sentencing recommendations, or case management scheduling without adequate scrutiny for bias would represent a technological encoding of historical injustice.

Richard Susskind's distinction between "automating" existing processes and "innovating" the delivery of legal services is highly relevant here. The digitisation of paper-based court processes, replacing physical files with digital files and physical summons with electronic summons, is automation: it makes existing processes faster and cheaper without fundamentally changing their nature. The genuine transformation of justice delivery requires innovation: rethinking the structure of dispute resolution at a more fundamental level to ask whether the current adversarial, hearing-based, court-centered model is the best way to deliver the resolution of disputes that citizens actually need. Bangladesh's current digital initiatives are primarily in the automation category, which is valuable and necessary but insufficient as a complete response to the access to justice challenge.

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CHAPTER NINETY-FOUR: ACCESS TO JUSTICE, LEGAL AID, AND THE JUSTICE GAP

Section 94.1: The Constitutional and Human Rights Framework for Access to Justice

Access to justice is both a procedural right and a substantive one. As a procedural right, it requires that the mechanisms of the legal system be open and accessible to all citizens without discrimination based on wealth, education, or social status. As a substantive right, it requires that those mechanisms be effective in actually vindicating the rights that citizens formally hold. The gap between these two dimensions of access to justice is particularly acute in Bangladesh, where the formal legal system is technically open to all citizens but is in practice accessible only to those with the financial resources to retain legal representation, pay court fees, fund multiple court appearances, and sustain litigation over the years or decades that resolution may require.

The constitutional basis for access to justice in Bangladesh includes Article 27's guarantee of equality before the law, Article 31's right to protection of the law, Article 32's guarantee of the right to life and personal liberty (which the courts have interpreted expansively to include the right to access judicial remedies for violations of fundamental rights), and Article 35's guarantee of fair trial. The directive principle in Article 20(2), that the state shall ensure basic necessities of life including the right to work, education, and social security for the poor, provides an additional constitutional basis for arguing that the state has an obligation to provide legal assistance to citizens who cannot afford to protect their legal rights without such assistance.

The international human rights framework adds further dimensions to the access to justice obligation. The UN Basic Principles on the Role of Lawyers (1990) provide that governments shall ensure that all persons are informed by the competent authority of their right to be assisted by a lawyer of their choice upon arrest or detention or when charged with a criminal offence. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012) develop this principle into a comprehensive framework for the provision of legal aid in criminal matters. And the 2030 Agenda for Sustainable Development, in Goal 16, commits states to providing access to justice for all as part of a broader commitment to peaceful, just, and inclusive institutions.

Section 94.2: The Legal Aid System: Structure, Coverage, and Adequacy

Bangladesh's formal legal aid system operates through the National Legal Aid Services Organization (NLASO), established under the Legal Aid Services Act 2000 and its subsequent amendments. NLASO provides legal representation in courts at all levels to individuals who meet the eligibility criteria, which include income below a specified threshold, widows, destitute women, victims of specific categories of crime including acid attacks and trafficking, members of scheduled caste communities, and persons detained on grounds other than criminal charges.

The Legal Aid Services (Second Amendment) Ordinance 2025, referenced in the judicial reform literature, introduced significant changes to the legal aid system, including an expansion of the categories of eligible recipients, an increase in the maximum fees payable to panel lawyers, and the introduction of mechanisms for monitoring the quality of legal aid services provided. These

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changes represent a recognition that the previous system was inadequately funded, covered too narrow a range of eligible clients, and provided insufficient quality control over the services delivered.

The practical coverage of Bangladesh's legal aid system, even after the 2025 reforms, remains severely inadequate relative to the need. The number of citizens who fall below the income threshold for legal aid eligibility is enormous, given Bangladesh's income distribution, but the capacity of NLASO and the district legal aid committees to serve these potential clients is limited by funding constraints, inadequate numbers of qualified panel lawyers, and geographical distribution that favors urban areas over rural ones where legal services are most scarce.

The legal aid panel lawyer system faces a quality challenge as well as a coverage challenge. Panel lawyers are typically young advocates with limited experience who take legal aid cases to build their practice while accepting fees that are significantly below market rates for private clients. The quality of representation provided by panel lawyers varies enormously, and the monitoring of that quality has been inadequate. The capacity test for legal aid provision introduced by Chief Justice Ahmed's directive in August 2024, which requires lawyers appointed from the panel to demonstrate a minimum level of competence before they are assigned to cases, is an important innovation but requires systematic implementation and follow-through to be effective.

The introduction of a 24/7 judicial helpline, supported by UNDP and operational from 2025, represents an important complement to the formal legal aid system by providing citizens with information about their legal rights and about the available legal aid services. The helpline can direct citizens to the appropriate legal aid resources, help them understand the procedures they need to follow, and provide basic legal information that reduces the informational disadvantage that poorer citizens face in their interactions with the formal legal system.

Section 94.3: The Economics and Politics of Legal Aid

The political economy of legal aid is complex and frequently overlooked in discussions that focus on the moral imperative of providing legal services to the poor. Legal aid competes for government resources with health, education, infrastructure, and other social needs, and in a context of constrained public budgets the allocation to legal aid tends to be inadequate. At the same time, the legal profession, which is the primary provider of legal aid services, has interests in both the expansion and the limitation of legal aid: expansion creates a larger market for legal services, but limitation can preserve the premium pricing of legal services for private clients by restricting the supply of subsidized alternatives.

The international experience of legal aid funding and delivery suggests several models that could inform Bangladesh's approach. The public defender model, in which the state employs salaried lawyers who specialize in legal aid work, as in the United States federal public defender system and in many Canadian and European jurisdictions, provides quality-controlled legal services at scale but requires substantial recurrent public expenditure. The judicare model, in which private lawyers are paid by the state to provide legal aid services at rates below their private billing rates but above the existing panel lawyer fees, draws on a larger pool of lawyers but requires careful

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quality monitoring and fee calibration. The clinical model, in which law school clinics provide legal services to eligible clients as part of the legal education of students, has the dual benefit of providing legal services to underserved communities while improving the practical training of law students, and is relevant to the legal education reform agenda examined in earlier Parts of this commentary.

The proposal that Bangladesh should develop a legal empowerment agenda that goes beyond the provision of individual legal representation to address the structural conditions that produce the justice gap has been advanced by legal scholars and civil society organizations including TIB and the Bangladesh Legal Aid and Services Trust (BLAST). Legal empowerment, as developed by scholars including Stephen Golub and by the Commission on Legal Empowerment of the Poor established by the UNDP in 2005, addresses the informational, organizational, and institutional conditions that prevent poor citizens from using law to protect their rights, by providing legal literacy education, community paralegal services, and organizational support for collective legal action. The evidence from legal empowerment programmes in various developing country contexts suggests that community-based legal empowerment can reach populations and address needs that individual legal aid provision cannot serve at affordable cost.

CHAPTER NINETY-FIVE: PROCEDURAL REFORM AND SUBSTANTIVE JUSTICE

Section 95.1: The Relationship Between Procedure and Substance

One of the deepest questions in the jurisprudence of civil and criminal procedure is the relationship between procedural rules and substantive outcomes. The Realist critique of procedural formalism, associated with scholars like Jerome Frank whose Courts on Trial (1949) famously exposed the gap between the formal model of trials and their actual operation, argues that procedure is not neutral but systematically advantages certain kinds of parties, evidence, and arguments while disadvantaging others. The sociology of law perspective, developed by scholars like Marc Galanter whose landmark 1974 article "Why the 'Haves' Come Out Ahead" demonstrated through systematic empirical analysis that repeat institutional litigants enjoy systematic procedural advantages over one-time litigants, provides an empirical foundation for the Realist critique.

Galanter's analysis of the "haves" and "have-nots" in civil litigation is directly applicable to Bangladesh. The "haves," in the Bangladeshi context, are the large corporations, financial institutions, government agencies, and wealthy individuals who repeatedly litigate in the court system and who have developed the expertise, relationships, and resources to use the system effectively. The "have-nots" are the individual citizens, small businesses, workers, and poor communities who are occasional users of the system and who lack the resources to sustain prolonged litigation, the expertise to navigate the procedural complexities of the system, and the relationships with the legal profession and the court bureaucracy that ease the path of experienced litigants.

The implications of this analysis for procedural reform are important. Reforms that make procedure more complex and expensive, even if they are motivated by legitimate concerns about the quality of adjudication, disproportionately disadvantage the "have-nots" because they

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increase the barriers to the formal assertion of legal rights. Reforms that simplify procedure and reduce cost, such as small claims courts and simplified processes for low-value disputes, disproportionately benefit the "have-nots" by making the system accessible at prices they can afford. And reforms that strengthen the quality of the legal aid system reduce the systemic disadvantage that the unrepresented face in adversarial proceedings.

The Bangladesh CPC's graduated fee structure, which imposes ad valorem court fees on civil suits that increase with the value of the claim, is a classic example of a procedural rule that disproportionately disadvantages the "have-nots." A litigant with a claim for a modest sum of money may find that the court fee required to file the suit represents a significant fraction of the amount claimed, making it economically irrational to pursue the claim through formal litigation even if the claim is legally meritorious. This problem is most acute for claims in the middle range of value: too large to be resolved in the Village Courts (which have very limited monetary jurisdiction) but too small to justify the cost of formal High Court or district court litigation.

Section 95.2: The Access-to-Justice Movement and Its Lessons for Bangladesh

The global access-to-justice movement, which began with Cappelletti and Garth's comparative study in the 1970s and has developed through successive waves of reform across multiple legal systems, provides important intellectual resources for the analysis of Bangladesh's procedural reform agenda.

Cappelletti and Garth identified three "waves" of access-to-justice reform: the first wave, focused on the provision of legal aid to those who cannot afford counsel; the second wave, focused on the protection of "diffuse" or collective interests through class actions and public interest litigation; and the third wave, encompassing structural changes to the dispute resolution system that make it more accessible, faster, and cheaper for all categories of users. Bangladesh's access-to-justice reform agenda has engaged primarily with the first wave and has made some progress on the second wave through the development of public interest litigation in the Supreme Court, but has yet to engage comprehensively with the third wave of structural reform.

The third wave reforms in the most successful jurisdictions have involved a combination of elements: the introduction of proportionate procedures calibrated to the value and complexity of the dispute, so that small claims can be resolved quickly and cheaply while complex claims receive the full procedural protection they warrant; the expansion of alternative dispute resolution as a genuine complement to court adjudication, so that many disputes are resolved through mediation or arbitration without consuming scarce court resources; the use of technology to reduce the cost and increase the accessibility of dispute resolution, including through online dispute resolution platforms that can resolve low-value e-commerce disputes without any court involvement; and the redesign of court procedures to be user-friendly for unrepresented litigants, who are an increasingly large proportion of court users in many jurisdictions as legal aid funding has contracted.

The Singapore experience is particularly instructive for Bangladesh because Singapore has achieved remarkable improvements in the speed and quality of commercial justice while also making significant progress on access to justice for individuals and small businesses. The

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Singapore courts' use of active case management, strict time standards, and comprehensive digital infrastructure has produced a court system that resolves commercial disputes with a speed and reliability that is internationally competitive. The Community Disputes Resolution Tribunals, the Small Claims Tribunals, and the Employment Claims Tribunals provide accessible and inexpensive dispute resolution for the categories of disputes most commonly faced by individual citizens and small businesses. And Singapore's investment in court technology, including an online court system and comprehensive digital case management, has demonstrated that technology can significantly improve the quality of justice delivery without compromising the fairness of proceedings.

Section 95.3: The Constitutional Vision of Substantive Equality and Procedural Reform

The constitutional framework of Bangladesh is not merely procedurally neutral; it embodies a substantive vision of equality and justice that has implications for the design of the procedural system. Article 28's prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth, Article 27's guarantee of equality before the law, and the directive principles of state policy including the obligation to reduce inequality of opportunity and status, collectively establish a constitutional mandate for a legal system that is not merely formally accessible but substantively effective in delivering equal justice.

The judicial interpretation of these constitutional provisions has, in the best moments of Bangladesh's constitutional jurisprudence, reflected an understanding that formal equality before the law is insufficient if procedural and institutional barriers prevent de facto equality in the enjoyment of legal rights. The Supreme Court's development of the public interest litigation jurisdiction, which allows organizations and individuals to file petitions on behalf of groups whose rights have been violated even without the direct personal interest traditionally required for standing, is the most important example of this constitutional understanding. The Court's willingness, in landmark cases like Dr. Mohiuddin Farooque v. Bangladesh (1996) and subsequent environmental and human rights cases, to grant standing to petitioners asserting rights on behalf of disadvantaged groups reflects a constitutional interpretation that takes the substantive equality mandate seriously.

The procedural reform agenda must be evaluated against this constitutional vision. Reforms that are technically efficient but that systematically disadvantage already-disadvantaged groups are not constitutionally adequate regardless of their administrative appeal. The design of digital systems must ensure that digital non-users are not excluded. The reform of the fee structure must ensure that the cost of litigation does not price out meritorious claims by poor litigants. The strengthening of the legal aid system must ensure that the quality of representation provided to legally aided clients is genuinely equivalent to that available to privately funded clients. And the development of alternative dispute resolution must ensure that mediation is not used to pressure vulnerable parties, particularly women in family disputes, to accept settlements that do not reflect their legal entitlements.

CHAPTER NINETY-SIX: THE POLITICAL ECONOMY OF JUDICIAL REFORM

Section 96.1: Institutional Interests and the Resistance to Reform

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Judicial reform, like all institutional reform, takes place in a political economy that includes powerful interests resistant to change as well as advocates for transformation. Understanding these interests and their influence on the reform process is essential for any analysis of why Bangladesh's court system has been so slow to reform despite decades of diagnosis and recommendation.

The most powerful institutional interest in the existing system is the legal profession itself, particularly the senior bar. Many of the procedural features of Bangladesh's court system that produce delay, such as liberal adjournment practices, complex interlocutory procedures, and the ability to appeal virtually every decision of the court, generate income for lawyers by extending the duration of litigation. A litigation process that is resolved in eighteen months rather than eighteen years provides much less opportunity for legal fees than the prolonged process that the current system enables. Senior advocates who have built their practices around extended litigation have a direct financial interest in maintaining the features of the system that produce that extension, and the Bar Council, which is controlled by the senior bar, has historically resisted procedural reforms that would reduce the duration of litigation.

This analysis of the legal profession's structural interest in procedural delay does not imply that all lawyers consciously resist reform for financial reasons; many individual advocates are deeply committed to the improvement of the justice system and support reform genuinely. But institutional interests operate through the structural incentives they create rather than exclusively through conscious calculation, and the structural incentive of the adversarial legal profession in an unreformed system is to accommodate rather than minimize delay. The cultural norms that have developed around adjournment practices, interlocutory applications, and the general pace of proceedings reflect these structural incentives and are deeply embedded in the professional culture of the Bangladesh bar.

The executive branch has, as the analysis throughout this Part has documented, a structural interest in maintaining influence over the judiciary that is in tension with genuine judicial independence. Executive ministries that control judicial postings, promotions, and disciplinary matters have a resource of patronage and influence that they are reluctant to surrender. The political leaders who appoint to executive positions have an interest in the judiciary's accommodation of executive action that genuine independence would threaten. These interests have produced the consistent pattern of formal endorsement of judicial independence combined with practical resistance to the institutional changes that would make independence real, a pattern that has been characteristic of Bangladesh's approach to judicial reform across all governments.

The legislature has its own structural interests in the court system that sometimes support and sometimes resist reform. Legislators who expect the courts to enforce their legislative decisions are interested in an efficient court system that can deliver enforcement quickly. But legislators who face judicial review of their legislation, or who have personal legal interests in pending cases, may prefer a court system that is slow, uncertain, and susceptible to influence over one that is efficient, principled, and genuinely independent.

Section 96.2: The Role of Civil Society and International Partners in Judicial Reform

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Against these institutional interests resistant to reform, the forces pressing for change include civil society organizations, the international development community, academic institutions, and sections of the legal profession that are genuinely committed to improvement. Understanding the role and limitations of these reform advocates is important for assessing the prospects for sustainable reform.

Civil society organizations, including BLAST (Bangladesh Legal Aid and Services Trust), Ain o Salish Kendra (ASK), Transparency International Bangladesh, and various human rights organizations, have played an important role in documenting the failures of the existing court system, advocating for reform, and providing legal services to underserved populations. Their empirical research on the barriers to access to justice, the experience of victims of the court system's delays and dysfunctionalities, and the systemic problems of corruption and political influence has provided the evidentiary foundation for reform proposals and has created public pressure for change. The role of civil society in Bangladesh's judicial reform process is analogous to the role that civil society organizations have played in successful judicial reform processes in South Africa, India, and several Latin American countries.

International development partners, particularly UNDP, the World Bank, the Asian Development Bank, the Swedish International Development Cooperation Agency (Sida), and the European Union, have been significant funders of judicial reform programmes in Bangladesh for many years. UNDP's decade-long partnership with the Supreme Court has provided technical assistance on digital infrastructure, legal aid, and judicial training. The World Bank has funded court modernization programmes that have introduced case management systems in some courts. These international partnerships have brought both resources and expertise that the domestic reform process would not have been able to generate on its own.

However, the influence of international partners on domestic judicial reform has limits that must be honestly acknowledged. The conditionality attached to international funding creates incentives for symbolic rather than substantive reform: governments may implement specific reform measures that satisfy donor requirements for the continuation of funding without genuinely transforming the institutional culture and political economy that produce the problems the reform is supposed to address. The technical assistance provided by international partners is most effective when it supports genuinely home-grown reform agendas rather than importing reform models that have been developed in very different institutional contexts and may not be applicable to Bangladesh's specific conditions. And the sustainability of reforms introduced with international support depends on whether they are embedded in domestic institutional structures and political commitments that will maintain them after the international funding ends.

Section 96.3: Theories of Institutional Change and Their Application

The academic literature on institutional change provides a theoretical framework for understanding the dynamics of judicial reform in Bangladesh that goes beyond the description of specific reform initiatives to explain the patterns of reform, resistance, and partial implementation that characterize the field.

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Douglass North's path dependence theory, developed in his monumental Institutions, Institutional Change and Economic Performance (1990), argues that institutional arrangements tend to reproduce themselves over time because the organizations and individuals that have adapted to existing institutions develop vested interests in their continuation and the capability to resist change. Applied to Bangladesh's judicial system, path dependence explains why colonial-era procedural codes, colonial-era court structures, and colonial-era professional practices have persisted so much longer than would be predicted by a purely rationalistic model of institutional choice. The existing institutions have created vested interests, developed professional cultures and expertise, and generated path-dependent complementarities with other institutions that make radical departure difficult and costly even when the inefficiency and injustice of the existing system are widely recognized.

Kathleen Thelen's theory of "layering," developed in How Institutions Evolve (2004), describes a pattern of institutional change in which new elements are added to existing institutional frameworks without fully replacing them, gradually transforming the character of the institution without a sharp break from the past. This pattern is highly visible in Bangladesh's judicial reform experience: new tribunals are added alongside existing courts without replacing them; new procedural provisions are layered onto the existing code without resolving the underlying contradictions; new reform bodies are created without abolishing the older bodies whose mandates they overlap. Layering produces institutional complexity and sometimes contradictory requirements that reduce the effectiveness of the overall system even as individual elements are improved.

Orren and Skowronek's concept of "intercurrence," the simultaneous operation of multiple institutional orders with different historical origins and different normative logics, is also relevant to Bangladesh's institutional landscape. The court system simultaneously operates under the logic of the colonial procedural codes, the logic of the independent Bangladeshi constitutional order, the logic of international human rights standards, and the logic of the traditional dispute resolution practices that continue to govern much of the country's actual dispute resolution. The tensions between these different institutional logics produce the contradictions and inefficiencies that characterize the system and make simple reform strategies inadequate.

The theory of gradual institutional transformation most applicable to the current moment in Bangladesh is what Mahoney and Thelen, in Explaining Institutional Change (2010), call "conversion," the redirection of existing institutions toward new purposes as a result of changed political and social conditions. The Monsoon Revolution of 2024 created precisely the kind of changed political and social conditions that can enable institutional conversion: a shift in the distribution of political power, a changed public discourse about what the judiciary should be and do, and a new leadership in the Chief Justice's office with a genuine mandate for transformative reform. Whether the current moment of potential conversion produces durable institutional change or is ultimately absorbed by the path-dependent inertia of the existing system will depend on the success of the reform coalition in securing legislative consolidation of the institutional changes that have been introduced.

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CHAPTER NINETY-SEVEN: THE THEORETICAL AND PHILOSOPHICAL DIMENSIONS OF JUDICIAL REFORM

Section 97.1: Dworkin's Law as Integrity and the Bangladesh Court System

Ronald Dworkin's theory of law as integrity, developed in Law's Empire (1986), provides a powerful framework for evaluating the aspirations of judicial reform in Bangladesh and the extent to which the existing and proposed institutions satisfy the demands that a principled legal system must meet. For Dworkin, law is not merely a collection of enacted rules but a coherent set of principles that express the political morality of the community. The judge's task, in Dworkin's theory, is not mechanical rule application but interpretation: the judge must construct the best available account of the principles embedded in the legal materials (statutes, precedents, constitutional provisions) and apply those principles to the case at hand in a way that achieves coherence with the community's best understanding of its political commitments.

The demands of Dworkin's integrity principle are particularly exacting for a court system like Bangladesh's, which operates under a constitutional order that embeds commitments to fundamental rights, equality, and the rule of law alongside a procedural framework inherited from a colonial system designed for very different purposes. A court system that genuinely embodied integrity in Dworkin's sense would adjudicate consistently with the constitutional principles of equality and dignity, would apply procedural rules in ways that advance rather than defeat the substantive justice those rules are supposed to serve, and would develop the law in a coherent direction that expresses the community's political morality rather than reflecting the partisan preferences of whichever political party happens to control the appointment process at any given time.

Evaluated against this Dworkinian standard, Bangladesh's court system falls short in several respects. The inconsistency of judicial decisions across different courts and different periods reflects a lack of the principled coherence that integrity requires. The procedural rules, as applied, frequently defeat rather than serve the substantive justice purposes they nominally exist to advance. And the susceptibility of the judiciary to political influence has introduced considerations into judicial decision-making that are inconsistent with the principled adjudication that integrity demands.

The relevance of Dworkin's theory to the reform agenda is that it provides a normative standard against which the adequacy of specific reforms can be evaluated. Reforms that address administrative efficiency without addressing the principled consistency of adjudication are necessary but insufficient from a Dworkinian perspective. Reforms that improve access to the court system without improving the quality of adjudication within it are similarly inadequate. A comprehensive reform adequate to Dworkin's demands would require not only institutional changes but a transformation of judicial culture toward the principled, consistent, integrity-focused adjudication that his theory demands.

Section 97.2: Fuller's Procedural Morality and the Bangladesh Experience

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Lon Fuller's analysis of the "inner morality of law," developed in The Morality of Law (1964), provides a second important theoretical framework for evaluating Bangladesh's court system. Fuller identified eight requirements that any system of governance through rules must satisfy if it is to qualify as genuinely legal rather than arbitrary: generality, promulgation, non-retroactivity, clarity, non-contradiction, possibility of compliance, constancy over time, and congruence between official action and declared rule. The failure to satisfy any of these requirements, in Fuller's theory, represents a failure of legality, not merely an administrative imperfection.

Fuller's requirements apply not only to the substantive law but to the procedural rules through which law is administered. A procedural system whose rules are unclear fails the clarity requirement. A procedural system that is applied inconsistently fails the congruence requirement. A procedural system whose requirements cannot in practice be complied with by ordinary citizens without specialist legal help fails the possibility of compliance requirement. And a procedural system whose rules are changed without adequate notice and consultation fails the constancy and promulgation requirements.

Bangladesh's procedural system fails several of Fuller's requirements in important respects. The complexity of the CPC and CrPC, and the vast body of accumulated judicial interpretation that governs their application, fails the clarity requirement for ordinary citizens attempting to understand their procedural obligations without legal assistance. The inconsistency of their application across different courts and different periods fails the congruence requirement. The practical impossibility of effective self-representation in complex litigation fails the possibility of compliance requirement. And the history of sudden changes to procedural rules without adequate consultation and notice, of which the 2025 amendments are the most recent example, creates risks of failure on the constancy and promulgation requirements.

Section 97.3: Sen's Capabilities Approach and Justice Delivery

Amartya Sen's capabilities approach, as applied to justice delivery, demands that we evaluate the court system not by its formal structure but by the actual capabilities it provides to citizens, the real freedoms that people enjoy to use the legal system to protect and advance their legitimate interests. A system that is formally open but practically inaccessible because of cost, delay, geographic barriers, linguistic barriers, or cultural alienation does not provide the capabilities that genuine access to justice requires.

Sen's distinction between "functionings," what people are actually able to do and be, and "capabilities," the real opportunities they have to achieve those functionings, maps directly onto the distinction between formal legal rights and the practical ability to vindicate them. Bangladesh's citizens formally possess the right to enforce their contractual obligations, challenge wrongful government action, seek compensation for personal injury, and protect their property against encroachment. But the capabilities to exercise these rights, the practical ability to bring a case, to sustain it through a prolonged process, to secure effective legal representation, to produce competent evidence, and to enforce any favorable judgment, are very unequally distributed in Bangladesh's current court system.

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The capabilities approach demands that judicial reform be evaluated by its distributive implications: who benefits from the reform and whose capabilities are expanded. A reform that improves the court system for wealthy commercial litigants without improving it for poor individual litigants expands capabilities in a distributively regressive way. A reform that benefits urban litigants with access to digital technology without benefiting rural litigants without such access is similarly regressive. The capabilities framework demands that reforms be specifically designed and evaluated for their impact on the least advantaged users of the court system, not only for their overall efficiency improvements.

CHAPTER NINETY-EIGHT: THE MAGISTRACY, CRIMINAL JUSTICE, AND MASS ADJUDICATION

Section 98.1: The Magistracy and Its Dual Role

The magistracy in Bangladesh occupies a position of particular importance in the justice system because of its role at the interface between the police, the prosecution, and the court, and because of the sheer volume of cases that magistrates handle relative to any other tier of the judiciary. The Bangladesh magistracy handles the initial reception of criminal complaints, the authorization of arrests and searches, the decision on remand applications, the conduct of preliminary enquiries, and, in the case of Judicial Magistrates, the trial of less serious criminal offences. The decisions of magistrates affect the liberty of individuals at the most acute point: the moment of arrest, detention, and initial processing through the criminal justice system.

The separation of the executive magistracy (which exercises administrative functions including the maintenance of public order under Chapter IX of the CrPC) from the judicial magistracy (which exercises purely judicial functions including the trial of offences) was one of the central requirements of the Masdar Hossain judgment and was formally implemented in 2007. However, the separation has been imperfect in practice, with executive magistrates retaining some quasi-judicial functions that create the structural confusion between administrative and judicial functions that the Masdar Hossain Court sought to eliminate.

The quality of magistrates' decisions on remand applications is a particularly critical issue for the protection of individual liberty. The data on pre-trial detention in Bangladesh consistently shows that a very high proportion of criminal cases involve prolonged pre-trial detention, with some accused persons spending years in custody before their cases reach trial. This prolonged pre-trial detention is partly a reflection of the general case backlog problem, which delays the scheduling of trials even for cases where the investigation is complete, and partly a reflection of inadequate judicial scrutiny of remand applications. Magistrates who lack the training, the time, or the institutional culture to exercise genuine scrutiny of remand applications, and who operate in conditions of severe workload pressure that make careful individual case assessment difficult, will tend to grant remand as a routine matter rather than as a genuine judicial determination that the circumstances of the specific case warrant continued detention.

Section 98.2: Mass Adjudication and the Justice of Scale

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The scale of the Bangladesh criminal justice system's operations, measured by the volume of cases processed at the magistracy level, creates what might be called a justice of scale problem: the systemic challenge of maintaining the quality of individual adjudication in a system that must handle enormous volumes of cases with limited resources. When a court is handling hundreds of cases per day, the average time available for individual case consideration is measured in minutes rather than hours. In these conditions, the procedural protections that are supposed to ensure fair consideration of each individual case cannot be genuinely implemented; they become formal gestures toward standards that cannot be met in practice.

This problem is not unique to Bangladesh. Similar challenges of mass adjudication are faced by criminal justice systems in many countries with large populations and limited judicial resources. The sociology of courts literature, including studies of the dynamics of plea bargaining in American criminal courts, the processing of immigration cases in European tribunals, and the operation of magistrates' courts in India and Pakistan, documents the systematic ways in which institutional pressures of scale produce processing justice rather than principled adjudication. Defendants are processed through the system at high speed, their cases categorized and resolved according to institutional routines rather than individual attention to the specifics of their situations, and the formal procedural protections that the law provides become largely illusory because the institutional conditions for their effective implementation do not exist.

The reform of mass adjudication in Bangladesh requires addressing both the supply side, increasing the number of magistrates and improving their training and support, and the demand side, reducing the volume of cases that enter the criminal justice system through decriminalization, diversion, and effective informal dispute resolution at the community level. The criminalization of minor offences, which should more appropriately be addressed through civil regulatory mechanisms or through mediation rather than through criminal prosecution, is a significant source of volume in Bangladesh's magistracy courts. The frequent use of Section 107 and Section 144 of the CrPC to address political disputes, public order situations, and social conflicts that are not genuinely criminal in nature adds further to the magistracy's caseload in ways that divert resources from genuine criminal matters.

CHAPTER NINETY-NINE: HIGH COURT BENCHES, DECENTRALIZATION, AND ACCESS

Section 99.1: The Case for Permanent High Court Benches

One of the most persistently discussed reform proposals in Bangladesh's legal system is the establishment of permanent High Court benches in the divisional cities, supplementing or decentralizing the jurisdiction currently concentrated in Dhaka. Bangladesh has only one High Court Division, sitting exclusively in Dhaka, to serve a population of over 170 million people distributed across eight administrative divisions and sixty-four districts. Citizens in Khulna, Rajshahi, Sylhet, Barishal, Mymensingh, and Rangpur who need to file a writ petition, challenge a subordinate court decision on appeal, or initiate company or admiralty proceedings must travel to Dhaka to access the High Court, with all the costs, delays, and disruptions that this requirement entails.

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The Constitution of Bangladesh does not prohibit the establishment of permanent benches of the High Court Division outside Dhaka; Article 101 provides for such jurisdiction and powers as are or may be conferred upon the High Court Division by the Constitution or any other law, which leaves open the possibility of legislative provision for permanent divisional benches. The proposal for permanent High Court benches has been recommended by multiple Law Commission reports, endorsed by successive bar council leadership positions, and agreed to in principle by political parties during talks with the National Consensus Commission in mid-2025.

The case for permanent divisional High Court benches rests on multiple grounds. The geographic access argument is most obvious: citizens in remote divisions should not have to travel hundreds of kilometers to access the constitutionally guaranteed writ jurisdiction. The economic efficiency argument follows: the cost of maintaining a single centralized high court, when measured against the travel costs, productivity losses, and accommodation expenses imposed on litigants from distant divisions, may well be higher than the cost of maintaining permanent divisional benches. The workload management argument suggests that distributing High Court business across eight divisions would reduce the Dhaka High Court's overwhelming caseload and allow for more timely consideration of cases at all benches. And the regional legal culture argument suggests that judges sitting in divisional cities would develop deeper familiarity with the regional social and economic conditions that are relevant to the cases they adjudicate.

The case against permanent divisional benches concerns the maintenance of doctrinal consistency across the High Court Division. If different benches in different cities develop different approaches to legal questions, the coherence of High Court jurisprudence will be compromised, and the principle of equality before the law will be undermined by regional variation in the application of legal standards. The counter to this concern is that doctrinal consistency is primarily maintained through the Appellate Division's jurisdiction, and that the problems of inconsistency are already present in the Dhaka High Court itself given the large number of judges sitting in different benches without adequate mechanisms for coordinating their jurisprudential development.

Section 99.2: Court Infrastructure and the Physical Architecture of Justice

The physical infrastructure of Bangladesh's court system is a dimension of the access to justice problem that is less theoretically glamorous than procedural reform or digital innovation but no less practically important. Many district court buildings are inadequate for their purpose: overcrowded, poorly ventilated, lacking adequate space for waiting litigants and their lawyers, lacking functional libraries, and physically inaccessible to people with disabilities. The management of paper case files in these physical conditions is a particular challenge: files are difficult to retrieve quickly, are vulnerable to damage by weather, insects, and physical deterioration, and are sometimes lost in ways that cause serious injustice to the litigants whose cases depend on their availability.

The investment in court infrastructure has historically been inadequate in Bangladesh, reflecting the low priority given to judicial resources in government budget allocations. The judiciary's share of the national budget has typically been below one percent of total government spending, a figure that compares unfavorably with the standards recommended by international judicial

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administration bodies. The Judicial Reform Commission's recommendations on budget allocation for the judiciary, including the proposal that the judiciary's budget should be determined by the parliament rather than negotiated with the executive ministries, are directly relevant to addressing this infrastructure deficit.

The establishment of the Supreme Court Secretariat, with its own budgetary authority under the control of the Chief Justice, was intended to address this structural problem by removing the executive's control over the judiciary's financial resources. The parliamentary committee's recommendation to repeal the Secretariat Ordinance would restore executive control over the judiciary's budget, reinstating the structural financial dependence that has historically prevented adequate investment in judicial infrastructure.

CHAPTER ONE HUNDRED AND SIX: THE CONSTITUTIONAL COURT QUESTION AND THE FUTURE OF JUDICIAL ARCHITECTURE

Section 106.1: The Debate on a Dedicated Constitutional Court

The proposal for a dedicated Constitutional Court for Bangladesh, separate from the High Court Division's current exercise of constitutional jurisdiction, has been discussed in academic and policy circles for many years and has gained renewed attention in the context of the constitutional reform proposals being developed by the Constitution Reform Commission established by the Yunus interim government. The question of whether Bangladesh should establish a dedicated Constitutional Court, on the model of Germany's Bundesverfassungsgericht, South Africa's Constitutional Court, or South Korea's Constitutional Court, or should continue with the existing system in which the High Court Division exercises constitutional jurisdiction subject to appeal to the Appellate Division, is one of the most fundamental structural questions facing Bangladesh's legal reformers.

The case for a dedicated Constitutional Court rests on several arguments. First, constitutional adjudication requires a distinctive form of expertise and a distinctive institutional culture that are different from the expertise and culture required for ordinary civil and criminal adjudication. Constitutional questions involve not merely the application of existing legal rules to specific facts but the principled development of a constitutional order over time, requiring judges with deep knowledge of comparative constitutional law, political theory, and the historical development of Bangladesh's constitutional commitments. A court that mixes constitutional adjudication with commercial, civil, and criminal matters may not develop the focused constitutional expertise that the specialization of adjudication allows.

Second, the existing system of constitutional jurisdiction in the High Court Division has been subject to the same criticisms of political influence and inconsistency that afflict the court system generally. The dramatic and sudden change in constitutional jurisprudence that has sometimes accompanied changes in government, including the reversals of constitutional doctrine that followed the 1975 coup, the various martial law regimes, and the political transitions of 1991 and 2008, reflects the vulnerability of constitutional adjudication to the political circumstances of the moment rather than the principled consistency that constitutional governance requires. A dedicated Constitutional Court, with longer terms for its judges, a more transparent and

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politically insulated appointment process, and a focused constitutional mandate, might be more resistant to this kind of doctrinal volatility.

Third, the experience of dedicated Constitutional Courts in other jurisdictions suggests that they can play an important role in the consolidation of democratic norms during periods of political transition. South Africa's Constitutional Court, established under the Interim Constitution of 1993 and confirmed in the final Constitution of 1996, has been widely credited with playing a central role in the consolidation of South Africa's constitutional democracy, developing a body of constitutional jurisprudence on fundamental rights, institutional accountability, and the rule of law that has provided a principled framework for the resolution of fundamental political disputes. Germany's Bundesverfassungsgericht has similarly been credited with the consolidation of German democracy after the Nazi period, developing a constitutional jurisprudence that has made the protection of fundamental rights and the requirements of constitutional governance genuinely operative in the structure of the state.

Bangladesh, in its current period of constitutional uncertainty and political transition, might particularly benefit from the stabilizing and norm-developing influence of a dedicated Constitutional Court. The constitutional reform process underway, which is generating proposals for fundamental changes to the structure of government, the electoral system, and the protection of rights, will produce new constitutional arrangements that need authoritative interpretation and consistent application. A dedicated Constitutional Court would be better positioned to provide this than the High Court Division, which is simultaneously managing an overwhelming caseload of non-constitutional matters.

The case against a dedicated Constitutional Court focuses primarily on institutional concerns. Creating a new court requires substantial resources, including the identification and appointment of suitable judges, the establishment of physical infrastructure, and the development of procedural rules and institutional culture. The risk of conflicts of jurisdiction between the Constitutional Court and the ordinary courts raises concerns about institutional coherence. And the experience of some dedicated Constitutional Courts, including those in several post-communist countries, suggests that dedication of function does not automatically produce independence and principled adjudication; Constitutional Courts can be captured by political interests just as effectively as other courts if their appointment processes and institutional structures are not adequately designed.

Section 106.2: The Commission for Constitutional Review and Its Proposals

The Constitution Reform Commission, one of the six reform commissions established by the Yunus interim government following the Monsoon Revolution, has been developing proposals for constitutional change that include, among many other elements, proposals relating to the structure of the judiciary. The Commission's proposals, which were being finalized during the period of this commentary's research, engage with the question of the Constitutional Court, the composition and appointment of the Supreme Court, the structure of the subordinate judiciary, and the constitutional protection of judicial independence.

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The Commission's work occurs in a context of deep constitutional controversy about the nature and extent of the amendments that the current constitutional moment authorizes. The Awami League government under Sheikh Hasina had, through the Fifteenth Amendment of 2011, consolidated a set of constitutional arrangements that the Monsoon Revolution rejected as illegitimate. The restoration of the Unamended 1972 Constitution, the amendment of specific provisions to reflect the lessons of Bangladesh's constitutional experience, and the adoption of a fundamentally new constitutional framework are all positions that are represented in the current constitutional debate. The Commission has to navigate these competing positions while also engaging substantively with the legal and institutional requirements for a constitutional framework adequate to Bangladesh's twenty-first century challenges.

The constitutional protection of judicial independence is one area where the Commission's proposals appear to have achieved some degree of consensus across the political spectrum. The formal recognition in constitutional text of the key institutional requirements for independence, including the autonomous judicial secretariat, the judicial appointment council, and the security of judicial tenure, would embed the 2025 reforms in the constitutional framework in a way that would make them more resistant to reversal by subsequent governments. This constitutional consolidation of the reform gains is essential if the current reform momentum is to produce durable rather than temporary improvements in the independence and quality of the judiciary.

CONCLUDING SYNTHESIS OF PART ELEVEN: PROCEDURE, STRUCTURE, AND THE FUTURE OF JUSTICE IN BANGLADESH

The argument of Part Eleven has moved through the constitutional architecture of the court system and the historical failures of judicial independence; the crisis of case backlogs whose 4.5 million pending cases represent a systemic failure of the rule of law at an enormous scale; the colonial origins and structural limitations of the CPC 1908 and CrPC 1898 and the significance of the 2025 amendments to both; the theory and practice of alternative dispute resolution and its relationship to the formal court system; the multiple dimensions of judicial independence and the 2024 to 2025 reform initiatives that have addressed them with unprecedented ambition and some substantial success; the specialized court agenda including commercial courts, environmental courts, and the reform of family justice; the digital agenda and its potential and limits; the access to justice crisis and the inadequacy of the existing legal aid system; the political economy of judicial reform and the institutional interests that resist it; the jurisprudential frameworks of Dworkin, Fuller, and Sen that provide normative standards for evaluating both deficiencies and reforms; and the ongoing constitutional reform debate about the fundamental architecture of the judicial system.

The overall picture that emerges from this analysis is one of a system in genuine and consequential crisis, facing challenges that have been building for decades and that have been systematically under-addressed by successive governments for reasons rooted in the political economy of institutional reform. The current reform moment, catalyzed by the Monsoon Revolution and given institutional expression in the Chief Justice's Judicial Reform Roadmap and the suite of legislative measures of 2025, represents the most serious attempt at comprehensive judicial reform in Bangladesh's post-independence history. The reforms that have been introduced are real, significant, and in some respects historic: the Supreme Court

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Secretariat Ordinance in particular addresses a structural deficiency that the Masdar Hossain judgment identified a quarter century ago and that has been resistant to resolution ever since.

At the same time, the analysis has identified several reasons for caution about the sustainability and adequacy of the current reform programme. The parliamentary committee's recommendation to repeal the key judicial independence ordinances threatens to reverse the most important institutional innovations before they can be consolidated. The digital reform agenda, while necessary, does not address the fundamental problems of insufficient judges, inadequate legal aid, and an adversarial professional culture that facilitates delay. The specialized courts agenda remains largely unimplemented. The legal aid system, despite the 2025 amendment, remains seriously inadequate for the scale of the access to justice challenge. And the persistent political economy of institutional resistance, rooted in the structural interests of the legal profession, the executive branch, and the political parties, will continue to operate against the full implementation of the reforms that the judicial reform agenda requires.

The jurisprudential analysis of this situation points to a conclusion that is both diagnostic and prescriptive. The diagnostic conclusion is that Bangladesh's court system fails to satisfy the normative standards demanded by the most important theories of law, justice, and procedural morality: it does not meet Dworkin's integrity requirements, it violates Fuller's procedural morality requirements in significant respects, and it fails to provide the capabilities that Sen's approach demands for the vast majority of Bangladesh's citizens who need access to justice. The prescriptive conclusion is that addressing these failures requires a comprehensive, sustained, and multi-dimensional reform programme that simultaneously addresses judicial independence, procedural modernization, judge numbers, access to justice through legal aid and alternative dispute resolution, digital transformation designed for universal access, and the investment in physical infrastructure and professional training that the court system's long-term adequacy requires.

Whether Bangladesh will seize the extraordinary historical opportunity that the current moment presents, or whether the forces of institutional inertia and political self-interest will once again frustrate the transformation that the rule of law demands, is a question whose answer will be written not in this commentary but in the legislative chambers, court buildings, and local communities of Bangladesh in the years ahead. What this commentary can offer is the intellectual framework, the historical perspective, and the normative standards that might inform, and perhaps strengthen, the choices that Bangladesh's legal reformers, its political leaders, and its citizens must make. The aspiration of a just, efficient, accessible, and genuinely independent court system is not utopian; it has been achieved, to varying degrees, by countries with less democratic tradition and fewer institutional resources than Bangladesh possesses. The achievement of that aspiration requires only the sustained political will to pursue it in the face of the institutional resistance that every serious reform effort must overcome.

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END OF PART ELEVEN

Part Twelve, the final and concluding Part of this twelve-part commentary, will address Bangladesh's engagement with the global legal order and will bring the entire twelve-part commentary to its intellectual conclusion. Part Twelve will examine: the constitutional basis of international law's reception into Bangladesh's domestic legal order and the jurisprudence on the relationship between treaty obligations and domestic legislation; Bangladesh's engagement with the international investment law regime, including its bilateral investment treaty network, its experience with international arbitration as a host state, and the reform agenda for the country's investment dispute framework; the emerging international framework of environmental and climate law and Bangladesh's distinctive position as both a frontline victim of climate change and an active participant in the international climate governance architecture; the transformation of the legal profession in the age of artificial intelligence and digital technology, examining how large language models, legal analytics platforms, and online legal service delivery are changing what it means to practise law and what education and training future lawyers will require; the comprehensive vision of a reformed Bangladesh legal system adequate to the challenges and opportunities of the twenty-first century, bringing together all the strands of analysis across twelve Parts into a synthetic account of what Bangladesh's legal system could and should become; and the tradition of legal commentary itself as an intellectual contribution to the ongoing project of building a just legal order, reflecting on the function of scholarship in legal reform and the responsibilities that the privilege of legal education imposes on those who hold it.

PART TWELVE: BANGLADESH IN THE GLOBAL LEGAL ORDER AND THE VISION OF A REFORMED LEGAL SYSTEM

PREFACE TO PART TWELVE

Every commentary must end, and every ending that is worth reading must be more than a mere stopping of the argument. It must be a synthesis: the gathering of threads that have been laid across many chapters into a weave that reveals a pattern not fully visible when the threads were being laid one by one. This twelfth and final Part of a twelve-part commentary on the legal system of Bangladesh, its bar council, its court system, and its imperative of reform is written in that spirit. It does not summarize what has come before, because readers of twelve Parts do not need to be told what they have already read. Instead, it situates the entire preceding analysis

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within the largest possible frame: the frame of the global legal order within which Bangladesh must operate as a sovereign state in the twenty-first century, and within which its legal system must eventually function if it is to serve its citizens adequately.

The global legal order of 2025 and 2026 is one of extraordinary complexity, rapid change, and fundamental contestation. The post-Second World War institutional architecture, built around the United Nations system, the Bretton Woods financial institutions, the General Agreement on Tariffs and Trade and its successor the World Trade Organization, and the human rights treaty bodies, is under sustained challenge from multiple directions simultaneously. The rise of China as a peer competitor to the United States in economic and geopolitical terms, the withdrawal of confidence in multilateral institutions by significant sections of the political spectrum in major Western countries, the proliferation of regional legal orders that sometimes align with and sometimes cut across the global architecture, and the emergence of genuinely global challenges, most critically the climate crisis, that no national legal system can address alone, are all reshaping the international legal environment within which Bangladesh must navigate.

Bangladesh is not a passive recipient of this global legal order. As its extraordinary advocacy for the ICJ Advisory Opinion on climate change demonstrates, Bangladesh is an active participant in the construction of international legal norms. As its engagement with international investment arbitration in the Saipem, Chevron, and now S. Alam disputes demonstrates, it is also a party to the international legal system in its most contested and consequential dimensions. And as its constitutional reform process, its transitional justice proceedings, and its judicial reform programme demonstrate, Bangladesh is engaged in a process of legal system building that has implications not only for its own citizens but for the broader project of demonstrating that postcolonial developing states can build legal systems adequate to the aspirations of their populations and the demands of the twenty-first century.

This Part examines, in turn: the constitutional basis of international law's reception into Bangladesh's domestic legal order; the international investment law regime and Bangladesh's complex experience as a host state; the ICJ Advisory Opinion on climate change of July 2025 and its transformative implications for Bangladesh's domestic legal framework; the artificial intelligence revolution in legal practice and its implications for the future of the legal profession in Bangladesh; the comprehensive vision of a reformed Bangladeshi legal system that emerges from the analysis across twelve Parts; and a concluding reflection on the role of legal commentary in the ongoing project of building a just legal order, which is both an intellectual tradition and a civic responsibility.

CHAPTER ONE HUNDRED AND SEVEN: THE CONSTITUTIONAL RECEPTION OF INTERNATIONAL LAW

Section 107.1: The Dualist Framework and Its Constitutional Expression

Bangladesh's relationship with international law is governed by a constitutional framework that reflects the dualist tradition inherited from the British common law system. In the dualist theory of international law, developed most systematically in the writings of Heinrich Triepel and Dionisio Anzilotti in the early twentieth century, international law and domestic law are separate

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legal orders that do not directly interact. A treaty ratified by Bangladesh is binding on Bangladesh as a matter of international law, creating obligations that Bangladesh owes to the other parties to the treaty and, in some cases, to the international community as a whole. But that treaty does not automatically become part of Bangladesh's domestic law: it requires incorporation by act of parliament before its rules can be invoked in domestic courts or enforced against individual citizens or state organs.

The dualist tradition stands in contrast to the monist theory, associated with Hans Kelsen and, in its most extreme form, with the claim that international law and domestic law form a single hierarchical legal order with international law at its apex. Many continental European legal systems adopt a modified monist approach under which ratified treaties are automatically part of domestic law and take precedence over conflicting domestic legislation. The constitutional frameworks of France, the Netherlands, and most of the South American constitutions reflect varying degrees of monism. The common law systems of the United Kingdom, India, Bangladesh, and most Commonwealth countries adopt the dualist approach, though with significant variations in how strictly the principle of non-automatic incorporation is applied.

The Bangladesh Constitution does not use the terminology of dualism or monism, but its structure reflects the dualist approach clearly. The Constitutional provisions on international law are found primarily in Article 25, which directs the state in its international relations to base its foreign policy on respect for international law and the principles enunciated in the UN Charter. Article 25 is, however, a directive principle of state policy located in Part II of the Constitution, and like other directive principles, it is not directly enforceable as a legal right in the courts. The practical effect of Article 25 is therefore primarily hortatory rather than mandatory: it directs the state to respect international law in its conduct, but it does not automatically incorporate the rules of international law into the domestic legal order or make them enforceable by citizens against the state.

The treatment of customary international law in Bangladesh's domestic legal system follows the common law approach. Customary international law, which consists of rules that have crystallized through consistent state practice accompanied by opinio juris (the belief that the practice is legally required), is generally regarded in common law systems as part of the common law unless it conflicts with a statutory provision or established common law rule. The theoretical basis for this incorporation of customary international law is the Blackstonian principle that the law of nations is part of the law of the land, which has been accepted by English courts since the eighteenth century and inherited by the courts of common law countries including Bangladesh. The practical significance of this principle is that customary international law rules, on matters such as state immunity, diplomatic protection, the law of the sea, and the prohibition of certain grave human rights violations, are part of Bangladesh's domestic law and can be applied by Bangladesh's courts without requiring specific legislative incorporation.

The treatment of treaties in Bangladesh's domestic law is more complex. The general principle, consistent with the dualist tradition, is that a treaty ratified by Bangladesh does not form part of domestic law until parliament enacts implementing legislation. The Constitution is silent on the process by which the executive may enter into and ratify treaties, a gap that has attracted academic criticism and calls for constitutional reform to ensure parliamentary oversight of treaty-

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making. In practice, Bangladesh has ratified many important international instruments without the enactment of comprehensive implementing legislation, creating situations where Bangladesh's international obligations and its domestic legal rules are not fully aligned.

Section 107.2: The Human Rights Treaties and Their Domestic Reception

Bangladesh has ratified the major international human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) in 2000, the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1998, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1984, the Convention on the Rights of the Child (CRC) in 1990, the Convention Against Torture (CAT) in 1998, and the Convention on the Rights of Persons with Disabilities (CRPD) in 2007. Bangladesh has also made several reservations to these instruments, most notably to CEDAW's Articles 2 and 16(1)(c) on the grounds that these conflict with the Sharia, a reservation that has attracted significant international criticism.

The domestic reception of these human rights treaty obligations has been incomplete and uneven. The most significant and most creative use of international human rights standards in domestic constitutional adjudication has been the Supreme Court's expansive interpretation of the right to life in Article 32 and the right to equality in Article 27 of the Constitution. The Court has, in a series of important decisions, interpreted these constitutional provisions in light of international human rights standards, treating the ratified human rights treaties as aids to interpretation of the Constitution's rights provisions rather than as directly enforceable rules in their own right.

This interpretive use of international human rights law, which does not require a formal finding that treaty provisions are part of domestic law, has allowed Bangladesh's courts to engage productively with international human rights standards while maintaining the formal dualist position. The approach is consistent with the principle of treaty-consistent interpretation developed by common law courts in other jurisdictions: Australian courts under the Mabo v Queensland (1992) and Teoh (1995) cases, Canadian courts interpreting the Canadian Charter of Rights and Freedoms in light of international human rights instruments, and Indian courts developing an expansive interpretation of constitutional rights informed by international standards have all used this approach. The method allows the international human rights corpus to function as an interpretive resource for domestic constitutional adjudication without requiring the formal legal steps of incorporation that the dualist system demands.

The most important recent development in the constitutional reception of international law in Bangladesh is the growing use of international standards in the constitutional reform process currently underway. The Constitution Reform Commission has explicitly engaged with international comparative constitutional experience and with the standards developed by international human rights bodies in designing its proposals. The incorporation of international human rights standards into the proposed constitutional amendments, including strengthening the non-derogable core of the fundamental rights provisions and introducing explicit protection for economic and social rights currently guaranteed only as directive principles, would represent a significant deepening of the constitutional reception of international law in a way that goes

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beyond the existing interpretive approach to create directly enforceable rights grounded in international standards.

Section 107.3: The Doctrine of Jus Cogens and Peremptory Norms in Bangladeshi Law

The doctrine of jus cogens, peremptory norms of international law from which no derogation is permitted, occupies a distinctive position in the international legal order and raises important questions for Bangladesh's domestic legal framework. The Vienna Convention on the Law of Treaties 1969, to which Bangladesh is a party, recognizes in Articles 53 and 64 that certain rules of international law are of such fundamental importance that no state may contract out of them: treaties that conflict with jus cogens norms are void. The content of jus cogens is a matter of some scholarly controversy, but the generally recognized peremptory norms include the prohibition of genocide, the prohibition of slavery and the slave trade, the prohibition of torture, the prohibition of racial discrimination (apartheid), and the prohibition of aggression.

The ICJ's Advisory Opinion on climate change of July 2025, discussed in detail below, raised but did not definitively resolve the question of whether obligations relating to the protection of the climate system might be moving toward the category of erga omnes obligations, owed by all states to all other states, if not yet jus cogens. This development is of particular significance for Bangladesh, given its extraordinary vulnerability to climate change and its active advocacy for the strongest possible international legal framework for climate obligations.

The Bangladesh Supreme Court has not yet had extensive occasion to address the domestic legal status of jus cogens norms directly. The International Crimes (Tribunals) Act 1973, as interpreted by the ICT, implicitly treats certain crimes, including genocide, war crimes, and crimes against humanity, as subject to universal condemnation that transcends ordinary principles of domestic criminal jurisdiction. This treatment is consistent with, though not explicitly derived from, the international law doctrine of jus cogens. As Bangladesh's engagement with international criminal law develops through the ICT proceedings and through its Rome Statute obligations, more direct engagement with the jus cogens framework is likely and would enrich the domestic jurisprudence on the relationship between international and domestic law.

CHAPTER ONE HUNDRED AND EIGHT: INTERNATIONAL INVESTMENT LAW AND BANGLADESH'S EXPERIENCE AS A HOST STATE

Section 108.1: The Architecture of International Investment Law

The international investment law regime, consisting of a network of over 3,000 bilateral investment treaties (BITs), multilateral investment agreements, and free trade agreements with investment chapters, combined with the International Centre for Settlement of Investment Disputes (ICSID) as the primary forum for resolving disputes between foreign investors and host states, represents one of the most significant and most contested bodies of international law affecting developing states in the contemporary era. The regime's significance for Bangladesh, as a state that has sought to attract foreign direct investment to fuel its economic development while

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managing the tensions between investment protection and domestic regulatory autonomy, is profound and multidimensional.

The intellectual history of the international investment law regime begins in the nineteenth century with the development of the customary international law rules on the treatment of aliens and their property. The Hull Formula, articulated by United States Secretary of State Cordell Hull in 1938 in a dispute with Mexico over the nationalization of foreign-owned oil companies, established the claim that international law requires states to pay "prompt, adequate, and effective" compensation when they expropriate foreign-owned property. This formula was disputed by developing states throughout the decolonization era and the New International Economic Order debates of the 1970s, which produced the UN General Assembly Resolution 3281 asserting the permanent sovereignty of states over their natural resources and the right to nationalize foreign property subject only to appropriate compensation determined by domestic law.

The resolution of this controversy, at least in practical terms, came not through the elaboration of customary international law but through the proliferation of bilateral investment treaties beginning in the 1960s and accelerating dramatically through the 1990s. These treaties, typically concluded between developed capital-exporting states and developing capital-importing states, established specific treaty commitments to treat foreign investors in accordance with a set of substantive standards including fair and equitable treatment, full protection and security, national treatment, most-favored-nation treatment, and the requirement to pay prompt, adequate, and effective compensation for expropriation. The treaties also typically included provisions for the settlement of disputes between the investor and the host state through international arbitration, bypassing the domestic courts of the host state in favor of international tribunals whose decisions are enforceable through the New York Convention of 1958 or the ICSID Convention of 1965.

The critical scholarship on the international investment law regime, developed by scholars including M. Sornarajah in his foundational work The International Law on Foreign Investment (multiple editions), Susan Franck in her empirical analysis of ISDS outcomes, Gus Van Harten in Investment Treaty Arbitration and Public Law (2007), and more recently by David Schneiderman in Constitutionalizing Economic Globalization (2008) and Kyla Tienhaara in The Expropriation of Environmental Governance (2009), has identified a set of serious structural problems with the regime that are directly relevant to Bangladesh's situation.

The first structural problem is the asymmetry of the investor-state dispute settlement (ISDS) mechanism, which allows foreign investors to bring claims against states in international arbitration but gives states no reciprocal right to bring claims against investors. This asymmetry creates what Van Harten calls a "structural bias" in the system that systematically favors the interests of investors over those of host state governments and their citizens. The second structural problem is the open-textured character of the substantive treaty standards, particularly "fair and equitable treatment," which has been interpreted by different tribunals in significantly different ways, producing substantial inconsistency and unpredictability in the outcomes of investment treaty arbitration. The third structural problem is the legitimacy deficit of investment arbitration as a process: arbitrators are appointed ad hoc for individual disputes, there is no

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formal doctrine of precedent, there is no standing appellate review mechanism, and the proceedings have historically been conducted with limited transparency.

Section 108.2: Bangladesh's BIT Network and ICSID Experience

Bangladesh has concluded approximately 30 bilateral investment treaties, with partners including the United States, the United Kingdom, Germany, France, the Netherlands, Switzerland, China, Japan, South Korea, Singapore, India, and various other states. Bangladesh ratified the ICSID Convention in 1980 and acceded to the New York Convention in 1992. Its domestic arbitration law, the Arbitration Act 2001, is modelled on the UNCITRAL Model Law and provides the implementing framework for both domestic and international commercial arbitration. These treaty and legislative commitments together constitute Bangladesh's integration into the international investment law regime, with all the protections for investors that this integration provides and all the risks and constraints on domestic regulatory autonomy that it entails.

Bangladesh's ICSID experience has been shaped by a small number of high-profile cases that have had significant implications for the state's approach to international investment obligations. The most important of these is the Saipem v. Bangladesh case (ICSID Case No. ARB/05/07), which has become one of the leading cases in international investment law on the doctrine of "judicial expropriation." Saipem, an Italian energy company, had obtained an ICC arbitration award against Petrobangla, Bangladesh's national oil company, under a gas pipeline construction contract. Bangladeshi courts set aside the ICC award on procedural grounds relating to the conduct of the arbitration. Saipem then brought an ICSID claim under the Italy-Bangladesh BIT, arguing that the Bangladesh courts' annulment of the ICC award constituted an unlawful indirect expropriation of its contractual rights.

The ICSID tribunal held that Bangladesh had breached the Italy-Bangladesh BIT by allowing its courts to frustrate and annul the ICC arbitration award in a way that effectively deprived Saipem of the benefit of the award. The tribunal's finding of "judicial expropriation," the characterization of domestic court action as a form of indirect expropriation giving rise to treaty liability, was a significant development in investment treaty jurisprudence. The Saipem case established that Bangladesh's domestic courts, however well-intentioned their legal analysis, are bound by Bangladesh's international investment treaty obligations in a way that creates external accountability for domestic judicial action. A domestic court that annuls or interferes with a foreign arbitral award in circumstances that the investment treaty prohibits is not merely making a legal error in domestic law; it is causing the state to breach its international obligations and creating liability for the payment of compensation to the injured investor.

The lesson of Saipem for Bangladesh's legal system is profound and requires explicit statement: the international investment law regime imposes substantive constraints on domestic judicial action, not merely on legislative or executive action. This is a development that challenges traditional assumptions about the immunity of judicial acts from international legal accountability, and it has significant implications for how Bangladesh's courts should approach cases involving foreign investors and foreign arbitral awards.

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The Chevron v. Bangladesh case (ICSID Case No. ARB/06/10) provides a contrasting lesson. Chevron sought approximately $240 million from Bangladesh, claiming that Petrobangla had wrongfully deducted a tariff from its gas sales. The ICSID tribunal rejected Chevron's claim on the merits, a significant victory for Bangladesh in one of its earliest major investment arbitration experiences. However, the tribunal awarded Chevron a significant portion of its legal fees against Bangladesh, on the ground that Bangladesh's conduct during the proceedings had been dilatory. Bangladesh "won" the case but incurred substantial financial costs as a result of procedural failings in the conduct of its defence. The lesson of Chevron is that a substantive legal victory in international investment arbitration is not sufficient: the state must also conduct its arbitration proceedings with procedural discipline and efficiency if it is to avoid the financial costs that come from tribunals exercising their cost discretion against a party that has caused unnecessary delay.

The S. Alam ICSID claim, which came to public attention in August 2025 when Mohammed Saiful Alam, a prominent Bangladeshi businessman accused by the Bangladesh Bank governor of helping siphon off approximately twelve billion dollars from the banking sector, announced that he would bring an ICSID claim against Bangladesh under the Bangladesh-Singapore BIT, presents a dramatically different challenge. The S. Alam case illustrates the risk that investment treaty protections, designed to protect legitimate foreign investment from government action, may be invoked as a shield against domestic anti-corruption and asset recovery measures. Bangladesh's government, seeking to recover funds allegedly removed from the banking system through fraudulent means, may find itself facing an international arbitration claim arguing that its asset freezes and investigations constitute an unlawful expropriation of investment protected by the bilateral investment treaty.

The S. Alam situation is not unique; it reflects a broader pattern in which investors facing domestic regulatory action, including anti-corruption enforcement, have used investment treaty claims to challenge that action before international tribunals. The cases of Yukos v. Russia, in which the Russian state's actions against the Yukos oil company, characterized by Russia as legitimate tax enforcement and by Yukos as politically motivated expropriation, resulted in a massive arbitration award against Russia; and Tethyan Copper v. Pakistan, in which Pakistan's refusal to grant a mining licence resulted in a $5.9 billion award against Pakistan, illustrate the potentially enormous fiscal consequences of investment treaty claims for developing state governments. For Bangladesh, which has emphasized its anti-corruption campaign as a central project of its post-Hasina political transition, the prospect of ICSID liability for the enforcement of anti-corruption measures represents a serious challenge that requires careful legal strategy.

Section 108.3: The Case for a Model BIT and Investment Law Reform

The analysis of Bangladesh's BIT network and ICSID experience leads directly to the recommendation, strongly supported by the legal scholarship, that Bangladesh should develop a model BIT that reflects contemporary best practices in investment treaty design and use that model as the basis for renegotiating its existing treaty network over time. The Dhaka Law Review's September 2025 analysis, "Towards a Bangladesh Model BIT: The Chevron Dues and the Case for Reform," provides the most thorough recent treatment of this recommendation.

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Bangladesh's existing BITs, many of which were concluded in the 1980s and 1990s, represent the "first generation" of investment treaties that were drafted at a time when the asymmetric implications of the ISDS mechanism were not fully understood and when developing host states had little negotiating experience or leverage. These early treaties tend to contain extremely broad investor protections, vague substantive standards susceptible to expansive interpretation by arbitral tribunals, and investor-state dispute settlement provisions that provide no carve-out for legitimate public interest regulation. They lack the "right to regulate" clauses that modern investment treaty practice includes to protect host states' ability to regulate in the public interest in areas such as environmental protection, public health, labour standards, and anti-corruption enforcement. They also lack transparency requirements that would allow public scrutiny of arbitration proceedings brought under their terms.

A Bangladesh model BIT should incorporate several key features. First, it should contain a carefully drafted definition of "investment" that excludes speculative or portfolio investments not genuinely connected to productive economic activity in Bangladesh, and that requires investments to be made in compliance with Bangladesh's domestic laws, including anti-corruption laws, as a condition of treaty protection. The requirement of "legality" as a condition of investment protection, which has been developed in a series of arbitral decisions and is now included in many modern treaties, would address the risk of the S. Alam situation by denying treaty protection to investments made through fraudulent or corrupt means.

Second, the model BIT should contain a carefully drafted "fair and equitable treatment" standard that limits its application to a specific, enumerated set of conduct, such as denial of justice, fundamental breach of due process, and manifest arbitrariness, rather than the open-textured formulation that has allowed expansive interpretation by investment tribunals. The carve-out from the fair and equitable treatment standard for "bona fide, non-discriminatory measures taken by a party to protect legitimate public welfare objectives such as public health, safety, and the environment" should be explicitly included.

Third, the model BIT should include a "right to regulate" clause affirming Bangladesh's right to regulate in the public interest, and should provide specific carve-outs for measures relating to environmental protection, public health, labour standards, financial stability, and anti-corruption enforcement, ensuring that these categories of regulation cannot be characterized as indirect expropriation giving rise to treaty liability.

Fourth, the model BIT should replace the existing ISDS mechanism, allowing unilateral claims by investors against the state, with a more balanced dispute resolution framework, potentially including an investment court model of the kind developed by the European Union in its recent trade agreements or the establishment of an appeal mechanism for investment arbitration awards. The global movement toward the reform of ISDS, led by UNCTAD's Investment Policy Framework for Sustainable Development and reflected in the negotiations for the Multilateral Investment Court at UNCITRAL, provides the international context within which Bangladesh's treaty reform agenda should be situated.

The political economy of BIT reform is challenging, because renegotiation of existing treaties requires the consent of the treaty partner, and capital-exporting states have historically resisted

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reforms that would reduce investor protections. However, the growing recognition, even in developed states, that the existing ISDS framework creates problems of legitimacy and regulatory chill that are not in the long-term interest of either investors or host states, combined with the specific vulnerabilities that Bangladesh's existing treaty network creates for its anti-corruption agenda and its regulatory autonomy, creates a genuine political window for reform that Bangladesh should actively pursue.

CHAPTER ONE HUNDRED AND NINE: THE CLIMATE CRISIS AND THE NEW INTERNATIONAL ENVIRONMENTAL LAW

Section 109.1: Bangladesh's Extraordinary Climate Vulnerability

Bangladesh occupies a position in the global climate crisis that is without parallel in its combination of extreme vulnerability and minimal responsibility. As a predominantly low-lying delta country, with approximately one-third of its territory lying less than three meters above sea level and with the majority of its population concentrated in areas that are acutely exposed to flooding, cyclones, tidal surges, and saline intrusion, Bangladesh faces existential climate risks that are among the most severe facing any country in the world. The scientific consensus, reflected in successive IPCC assessment reports, is that under current emissions trajectories, Bangladesh could lose approximately one-third of its current landmass to sea level rise by 2100, displacing tens of millions of people and devastating the agricultural productivity that is the foundation of the country's food security.

At the same time, Bangladesh's contribution to the global stock of greenhouse gas emissions that is causing this catastrophe is among the smallest of any country in the world. Bangladesh's per-capita carbon dioxide emissions are approximately 0.6 tonnes per year, compared to approximately 16 tonnes for the United States, 8 tonnes for China, 7 tonnes for Germany, and 2 tonnes for India. Bangladesh has committed approximately $400 billion in domestic adaptation needs under its National Adaptation Plan, a sum that vastly exceeds its domestic financing capacity and requires substantial external support from the states most responsible for the emissions that have created the adaptation challenge in the first place.

This combination of extreme vulnerability and minimal responsibility creates an extremely compelling case for climate justice: the moral and legal claim that the states most responsible for causing the climate crisis should bear the primary financial and legal responsibility for its consequences, including the consequences suffered by states like Bangladesh that have done virtually nothing to cause the crisis but are bearing disproportionate costs from its effects. The articulation of this claim in legal terms, through international legal instruments, international institutional processes, and domestic legal proceedings, has been one of Bangladesh's most important contributions to the development of international law in the twenty-first century.

Section 109.2: The ICJ Advisory Opinion of July 2025 and Its Transformative Significance

The International Court of Justice's Advisory Opinion on the Obligations of States in respect of Climate Change, delivered on 23 July 2025, is the most important international legal document produced in the twenty-first century from the perspective of Bangladesh's legal interests. The

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Opinion, which was the culmination of a process initiated by the UN General Assembly Resolution 77/276 of March 2023 (co-sponsored by 130 states, adopted by consensus, and significantly shaped by the advocacy of Bangladesh and other climate-vulnerable countries), represents the highest judicial authority in the world's unequivocal statement that states have binding legal obligations to protect the climate system.

Bangladesh was one of the eighteen core countries that participated in drafting the questions for the ICJ and one of the most active participants in both the written and oral proceedings. Bangladesh's submission to the Court, which emphasized the enormous adaptation financing needs of climate-vulnerable developing states, the obligation of developed fossil fuel-producing states to provide technology transfer and capacity building for climate adaptation, and the specific duties in respect of climate-related displacement, represented a comprehensive articulation of the legal claims of climate-vulnerable states that the Court's Opinion substantially validated.

The Opinion's principal holdings are of extraordinary significance for international law and for Bangladesh's legal position. The Court held, unanimously, that states have legally binding duties to protect the climate system from greenhouse gas emissions under both the specific climate change treaty framework and general customary international law. It affirmed that the Paris Agreement creates legally enforceable obligations, including the requirement that nationally determined contributions reflect the "highest possible ambition" in alignment with the 1.5 degree Celsius temperature goal, and that NDCs must become progressively more ambitious over time. It held that producing and consuming fossil fuels, granting exploration licences for fossil fuels, and providing subsidies for fossil fuels could constitute internationally wrongful acts attributable to the state. And, most significantly for climate-vulnerable developing states like Bangladesh, the Court applied the rules of state responsibility to climate change obligations, recognizing the applicability of established causation rules to reparation claims for climate harm and affirming that climate obligations are erga omnes obligations, meaning that all states have standing to seek reparation for their violation.

The ASIL Insight's analysis of the Opinion correctly identifies its most striking feature: the Court was unanimous on all points, despite the unprecedented breadth and boldness of its holdings. The unanimity of the Court, which includes judges from major fossil fuel-producing states and from states that argued strenuously against an expansive interpretation of climate obligations in their submissions, gives the Opinion a normative authority that goes well beyond what would have been possible with a closely divided judgment. As the Center for International Environmental Law stated, the Opinion "declares the era of fossil fuel impunity over and sets a new global standard for urgent action and accountability on climate justice."

Section 109.3: The Domestic Legal Implications for Bangladesh

The Dhaka Law Review's February 2026 analysis, "Strengthening Domestic Climate Governance: Legal Lessons from the ICJ Advisory Opinion for Bangladesh's Climate Justice and Accountability Framework," provides the most thorough treatment of the Opinion's implications for Bangladesh's domestic law. The article correctly identifies a fundamental paradox: Bangladesh, as one of the most active advocates for the ICJ Opinion and one of the states whose

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interests it most clearly serves, has significant gaps in its domestic legal framework for climate governance that undermine its ability to fully utilize the Opinion's legal authority.

The most significant of these gaps is the absence of a comprehensive domestic Climate Change Act. Bangladesh has the Bangladesh Climate Change Strategy and Action Plan, the Bangladesh Climate Change Trust Fund Act 2010, the Mujib Climate Prosperity Plan, and various sectoral policies on climate adaptation and mitigation. But these instruments lack the legal force of comprehensive legislation and do not create the enforceable rights, mandatory duties, and institutional accountability mechanisms that a genuine Climate Act would provide. The ICJ Opinion provides a powerful new impetus for the enactment of such legislation: if Bangladesh's government has internationally binding obligations to protect the climate system, those obligations must be translated into domestic legal obligations on specific actors, including the state, state-owned enterprises, and private corporations, through domestic legislation that creates enforceable rights and duties.

The constitutional dimension of the climate law question is equally important. Bangladesh's Constitution contains Article 18A, inserted by the Fifteenth Amendment in 2011, which states that the state shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, biodiversity, wetlands, forests, and wildlife for the citizens. Article 18A is placed in Part II of the Constitution as a directive principle of state policy and is not directly enforceable as a fundamental right. However, the ICJ Opinion, by establishing that the right to a healthy environment is a binding obligation of international law, provides the doctrinal tools for the Bangladesh Supreme Court to interpret the existing constitutional right to life under Article 32 expansively to include the right to a stable and liveable climate, creating a directly enforceable constitutional right that parallels the international obligations that the ICJ has confirmed.

The Dhaka Law Review article calls for Bangladesh to use the ICJ Opinion to "hard-wire accountability" into its domestic legal framework. This is precisely the right formulation. The Opinion's recognition of climate obligations as erga omnes gives Bangladesh legal standing to pursue climate claims against major emitting states before international tribunals, in proceedings that may eventually include specific reparation claims for the adaptation costs that Bangladesh is bearing as a direct result of emissions for which it bears no responsibility. The Opinion's confirmation that fossil fuel production, consumption, and subsidies can constitute internationally wrongful acts potentially gives Bangladesh's courts a basis for scrutinizing domestic regulatory decisions that authorize fossil fuel development or remove climate-protective measures, by reference to Bangladesh's international legal obligations.

The specific obligations identified in the ICJ Opinion for providing adaptation finance, technology transfer, and assistance with climate-related displacement, particularly relevant to Bangladesh given its projected displacement of tens of millions of people as sea levels rise and weather extremes intensify, create the framework for a comprehensive legal strategy that Bangladesh can pursue simultaneously in domestic courts, before international human rights bodies, in international climate negotiations, and potentially before international tribunals including the ICC (if the crime of "ecocide" is eventually incorporated into international criminal law, as has been increasingly proposed).

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Section 109.4: Climate Litigation and the Future of Environmental Adjudication

The ICJ Advisory Opinion is part of a broader global movement of climate litigation that has produced significant rulings in multiple jurisdictions and that is fundamentally reshaping the relationship between climate science, international law, and domestic legal systems. The Dutch Urgenda case (2019), in which the Dutch Supreme Court held that the Dutch state had a duty of care under Article 8 of the European Convention on Human Rights to reduce greenhouse gas emissions to a level consistent with the 1.5 degree target; the Colombian Supreme Court's 2018 ruling on Amazon deforestation; the Pakistani Lahore High Court's Asghar Leghari judgment; and the South African court's 2025 use of the ICJ Opinion (within a week of its delivery) in challenging Shell's offshore oil project, all demonstrate the global reach of climate litigation as a legal tool.

In Bangladesh, public interest litigation on climate and environmental questions has been developing since the Dr. Mohiuddin Farooque cases of the 1990s, which established the constitutional right to a healthy environment. The Bangladesh Environmental Lawyers Association (BELA) and other civil society organizations have brought significant environmental cases before the High Court Division that have generated important jurisprudence on the state's obligations to enforce environmental regulations. The ICJ Opinion now provides additional international authority that Bangladesh's courts can draw upon in interpreting the constitutional and statutory framework for environmental protection, aligning domestic jurisprudence with the international obligations that the Opinion has authoritatively confirmed.

The institutionalization of climate adjudication in Bangladesh requires several specific reforms. The Environmental Courts, as Part Eleven of this commentary noted, currently lack the scientific expertise, the civil jurisdiction, and the appellate structure needed for effective environmental adjudication. The creation of a Green Bench or Climate Court within the Supreme Court, with specialized jurisdiction over climate and environmental matters and the authority to draw on independent scientific expertise, would represent Bangladesh's institutional response to the challenge that the ICJ Opinion has identified. This reform would complement the broader court reform agenda of Part Eleven and would demonstrate Bangladesh's domestic legal seriousness about the international obligations it has championed before the world's highest court.

The potential for climate reparations claims deserves particular treatment in the Bangladesh context. The ICJ Opinion's confirmation that climate obligations are erga omnes and that the rules of causation applicable to reparation claims for climate harm represents a potential opening for legal claims against major emitting states for the specific, identifiable costs of climate change being borne by Bangladesh. The loss of agricultural land to saline intrusion, the destruction caused by increasingly severe cyclones, the costs of constructing coastal defences, the expenses of relocating climate-displaced communities, and the future costs of sea level rise are all potentially quantifiable in ways that could ground specific reparation claims against the states whose emissions have caused them. The legal and diplomatic complexity of such claims is enormous, and the ICJ Opinion stops well short of specifying any mechanism for their pursuit. But the Opinion's doctrinal framework, particularly its recognition of erga omnes obligations and its affirmation of causation rules for reparation, provides the legal foundation that Bangladesh's climate justice advocates have been seeking.

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CHAPTER ONE HUNDRED AND TEN: ARTIFICIAL INTELLIGENCE AND THE FUTURE OF LEGAL PRACTICE

Section 110.1: The AI Revolution and Its Dimensions

The transformation of legal practice by artificial intelligence represents the most fundamental change in the legal profession since the invention of the printing press enabled the mass distribution of legal texts and the development of systematic legal education. This is not hyperbole: the industrialized legal practice model of the twentieth century, in which large teams of junior lawyers performed document review, legal research, and contract drafting under the supervision of senior practitioners, is being disrupted at a pace that would have seemed implausible as recently as 2020. By 2025, according to Thomson Reuters research, the use of artificial intelligence by law firm professionals increased by 315% between 2023 and 2024 alone. Clio's 2025 Legal Trends report found that 79% of legal professionals reported using AI tools in their firms. The LegalTech market globally is poised to surpass $20 billion within the next few years, reflecting the depth of the transformation underway.

The dimensions of AI's impact on legal practice can be organized around three principal domains: the automation of routine legal tasks, the augmentation of professional legal judgment, and the potential transformation of the model of legal service delivery itself. Each of these dimensions has implications for Bangladesh's legal profession that require systematic analysis.

The automation of routine legal tasks is the dimension of AI impact that has arrived most fully and whose effects are already being felt in legal practice globally, including in Bangladesh. Contract review, which has traditionally required teams of lawyers to read through large volumes of documents to identify relevant clauses, risk provisions, and inconsistencies, can now be performed by AI tools like Luminance, Kira, and Spellbook that reduce the time required for contract analysis by as much as 90% in some reported implementations. Legal research, which required skilled lawyers to spend hours searching through databases of statutes, regulations, and judicial decisions to identify relevant precedents, can now be substantially accelerated by AI research platforms like Harvey, CoCounsel, and DeepJudge that can surface relevant legal authorities from vast databases in seconds. Document review in litigation, which required teams of paralegals to categorize and assess the relevance of thousands or millions of documents, can now be accelerated dramatically by eDiscovery AI platforms that can identify relevant documents with high accuracy at a fraction of the cost of human review.

These automation capabilities have profound implications for the economics of legal practice. If the tasks that currently occupy the bulk of junior lawyers' time can be performed by AI tools at a fraction of the cost, the demand for junior legal labor will fall, the business models of large law firms that depend on high billing rates for large teams of junior associates will be disrupted, and the cost of legal services to clients may fall, improving access to legal services for clients who currently cannot afford them. At the same time, the concentration of AI tools in large, well-resourced law firms risks exacerbating the advantage that sophisticated repeat-player litigants already enjoy over individual citizen litigants who cannot afford access to AI-enhanced legal services.

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The augmentation of professional legal judgment is a more complex and more contested dimension of AI impact. AI tools that can analyze the outcomes of previous litigation to identify patterns and predict likely outcomes, that can suggest arguments and counter-arguments based on analysis of relevant precedents, that can draft contract clauses calibrated to the specific risk preferences and negotiating position of the client, or that can identify regulatory compliance risks in business operations, all represent potential improvements in the quality of legal advice and representation that serve both legal professionals and their clients. The evidence from early implementations of these tools in major law firms globally suggests that lawyers who use AI tools effectively do produce better work product more efficiently than those who do not.

However, the augmentation of judgment also raises concerns that must be directly addressed. AI tools are trained on historical legal data, and the historical legal system has embedded biases, inconsistencies, and inequities that AI tools risk perpetuating or amplifying. An AI tool trained on Bangladesh's historical judicial decisions will learn from a jurisprudence that has been shaped by the political pressures and institutional weaknesses documented throughout this commentary. A predictive analytics tool that predicts outcomes based on historical patterns may predict that certain kinds of cases are unlikely to succeed before certain kinds of courts or judges, in ways that reflect historical patterns of political influence rather than principled legal analysis, and thereby counsel clients to abandon meritorious claims.

The potential transformation of legal service delivery, the third and most speculative dimension, involves the possibility that AI could fundamentally change who provides legal services, to whom, and at what cost. Richard Susskind's vision of online courts and online legal service delivery, Josua Browder's DoNotPay chatbot (however legally contested), and the proliferation of AI-powered legal self-help platforms suggest that a future in which many routine legal matters, including simple contracts, basic wills, straightforward immigration applications, and consumer rights claims, can be handled by AI systems without the involvement of a human lawyer, may not be as distant as the legal profession might wish.

Section 110.2: Bangladesh-Specific Dimensions of the AI Transformation

The AI transformation of legal practice is a global phenomenon, but its specific implications for Bangladesh's legal system are shaped by the particular conditions, challenges, and opportunities of the Bangladeshi context. Understanding these specific implications requires moving beyond the general analysis of AI's impact on legal practice to examine how AI interacts with the specific features of Bangladesh's legal environment.

The language dimension is the first Bangladesh-specific consideration. Bangladesh's legal system operates in both Bengali (Bangla) and English: constitutional and statutory provisions are enacted in both languages, but court proceedings at the higher level are conducted primarily in English, while district court proceedings are often conducted in Bengali, and the vast majority of the population can only effectively use legal services in Bengali. AI tools for legal research, contract drafting, and legal advice are overwhelmingly developed in English, and many of the most sophisticated tools have very limited capability in Bengali. The development of high-quality AI legal tools in Bengali is both a technical challenge, requiring large training datasets of Bengali legal texts, and an equity challenge: without Bengali-language AI tools, the benefits of

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AI-enhanced legal services will be concentrated among English-speaking elites and will not reach the vast majority of Bangladesh's population who need legal assistance in their native language.

The infrastructure dimension is the second Bangladesh-specific consideration. The effective use of AI tools requires reliable internet connectivity, access to devices capable of running or accessing sophisticated software, and digital literacy among legal professionals. Bangladesh's connectivity infrastructure, while improving rapidly, remains uneven between urban and rural areas. Many district court practitioners, particularly those in smaller district towns, operate with limited connectivity and limited access to digital legal resources. The deployment of AI tools across the entire legal profession, rather than merely in the major commercial law firms in Dhaka and Chattogram, requires infrastructure investment and digital training that goes beyond what individual law firms can provide.

The data ecosystem dimension is the third Bangladesh-specific consideration. AI tools for legal research and predictive analytics are only as good as the quality and comprehensiveness of the legal databases on which they are trained. Bangladesh's legal data ecosystem is significantly less developed than those of the major common law jurisdictions. The Supreme Court publishes its judgments online, but the coverage is incomplete, and the judgments of subordinate courts, which constitute the vast majority of Bangladesh's judicial output, are largely not available in searchable digital form. The development of a comprehensive, machine-readable database of Bangladeshi legal materials, including all levels of court judgments, all enacted legislation, all subsidiary legislation, and all regulatory guidance, is both a prerequisite for the effective deployment of AI legal tools in the Bangladeshi context and a significant public good in itself, improving access to legal information for all users of the legal system.

The professional ethics dimension is the fourth Bangladesh-specific consideration. The Bangladesh Bar Council's regulatory framework for the legal profession, examined in the preceding Parts of this commentary, was developed in a very different technological environment and does not currently address the ethical questions raised by AI use in legal practice. Questions such as: what disclosure obligations do lawyers have when they use AI tools in their work? What duty of competence requires lawyers to understand the capabilities and limitations of AI tools they are using? What safeguards are required to protect client confidentiality when using AI tools that may process client information on external servers? How should lawyers verify the accuracy of AI-generated legal research before relying on it in court submissions? All of these questions require answers in the form of ethics rules and guidance that Bangladesh's Bar Council has not yet developed.

The American Bar Association's August 2024 Formal Opinion 512 on generative AI in legal practice provides the most authoritative guidance yet developed by a major bar association, establishing obligations of competence in the use of AI, requirements for supervision of AI outputs, disclosure obligations, and confidentiality requirements. The Bangladesh Bar Council should engage seriously with this and subsequent guidance from other bar associations to develop its own framework for the ethical use of AI in Bangladeshi legal practice, adapted to Bangladesh's specific regulatory and technological conditions.

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Section 110.3: AI and Access to Justice in Bangladesh

The most important potential benefit of AI for Bangladesh's legal system is its potential to dramatically improve access to legal services for the millions of citizens who currently cannot afford or cannot access adequate legal representation. The AI transformation of legal service delivery could reduce the cost of routine legal services substantially, making them accessible to clients who currently cannot afford a lawyer. AI-powered legal chatbots that can provide accurate, reliable information about legal rights and procedures in Bengali could serve as a substitute for, or at least a supplement to, formal legal advice in many of the situations where citizens most urgently need legal guidance.

The potential for AI to support the legal aid system is particularly significant. An AI system that can assist legal aid lawyers in drafting standard documents, researching relevant precedents, and identifying applicable legal principles could dramatically increase the productivity of legal aid lawyers, allowing them to serve more clients without compromising the quality of the service provided. An AI system that can conduct initial screening of potential legal aid clients, identify the legal issues in their situation, and provide basic legal information, could extend the reach of the legal aid system without requiring proportionate increases in the number of lawyer hours.

However, the access to justice potential of AI in Bangladesh's context can only be realized if specific conditions are met. The development of high-quality Bengali-language AI legal tools requires investment that is unlikely to come from commercial legal technology companies focused on larger, more lucrative markets. Government support for the development of open-source, Bengali-language legal AI tools, potentially in partnership with universities, civil society organizations, and international development partners, may be necessary to ensure that the benefits of AI are democratized rather than concentrated in the hands of those who can afford expensive commercial tools. The Bar Council and law schools should incorporate AI literacy into the curriculum and continuing professional development programme for lawyers, ensuring that all lawyers, not only those in large commercial firms, are equipped to use AI tools responsibly and effectively.

The regulatory framework for AI in Bangladesh's legal system is a question that requires urgent attention. Bangladesh's Personal Data Protection Ordinance 2025, which was under development during the period of this commentary's research, will provide part of the framework for governing the use of AI systems that process personal data, including in the legal services context. A broader AI regulatory framework, addressing questions of transparency, accountability, bias prevention, and liability for AI errors, is also needed. Bangladesh's legal community should engage actively with the development of these regulatory frameworks, ensuring that the specific concerns of the legal profession, including professional privilege, fiduciary duty, and the protection of client confidentiality, are adequately reflected in regulatory instruments that currently appear to be focused primarily on the commercial deployment of AI rather than on professional services contexts.

CHAPTER ONE HUNDRED AND ELEVEN: THE COMPREHENSIVE VISION OF A REFORMED BANGLADESHI LEGAL SYSTEM

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Section 111.1: The Accumulation of Analysis Across Twelve Parts

Twelve Parts of analysis covering the civilizational roots of Bangladeshi legal thought, the colonial transformation of the legal order, the founding of the Bangladeshi state and its constitutional architecture, the structures of the bar and legal education, the substantive domains of public and private law, the challenges of constitutional adjudication and fundamental rights, the politics of legal reform, the extraordinary complexity of transitional justice, the court system and procedural law, and Bangladesh's engagement with the global legal order have been, in one sense, twelve independent inquiries. They have examined different parts of a complex system from different angles and with different analytical tools. In another and more fundamental sense, they have been a single sustained argument: that Bangladesh possesses the legal heritage, the constitutional aspiration, and the human talent to build a legal system adequate to the demands of the twenty-first century, but that it has not yet done so, and that the gap between aspiration and achievement is not merely a technical problem but a problem rooted in the political economy of institutions that this commentary has sought to illuminate.

The vision of a reformed Bangladeshi legal system that emerges from the accumulation of analysis across twelve Parts is not utopian. It does not demand perfection. It does not require that Bangladesh resolve centuries of colonial and post-colonial institutional damage overnight. It does not assume that political will is costless or that institutional change is easy. What it demands is serious, sustained, and comprehensive engagement with the structural problems that have been identified across twelve Parts of analysis, informed by the best available theory, comparative experience, and empirical evidence about what works, and motivated by the constitutional aspirations that Bangladesh's founders embedded in the 1972 Constitution and that its citizens have repeatedly expressed, most recently in the extraordinary Monsoon Revolution of July and August 2024.

Section 111.2: The Five Foundations of a Reformed Legal System

The reformed Bangladeshi legal system that this commentary envisions rests on five foundations, each of which has been analyzed in detail across the preceding Parts and each of which requires specific reforms whose design has been addressed in the appropriate chapter.

The first foundation is a genuinely independent judiciary. The analysis across Parts Seven, Eight, Ten, and Eleven has documented how thoroughly the formal constitutional guarantees of judicial independence have been undermined in practice by executive control of judicial appointments, postings, promotions, and discipline. The reform path is clear: the Supreme Court Secretariat must be maintained and strengthened as a fully autonomous administrative arm of the judiciary, its status embedded in the Constitution rather than dependent on ordinary legislation or executive ordinance; the Supreme Judicial Appointment Council must be preserved and its procedures made fully transparent and merit-based, with civil society participation in the assessment of candidates; security of tenure for judges at all levels must be genuinely implemented through specific disciplinary rules and procedures that prevent the use of transfer and demotion as instruments of executive pressure; and the judiciary's budget must be determined by parliament on the recommendation of the Supreme Court rather than negotiated with the executive ministry.

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The second foundation is an accessible, efficient, and fair court system. The analysis of Part Eleven has documented the crisis of case backlogs, the inadequacies of colonial procedural codes, the insufficient number of judges, the inadequate physical infrastructure, and the digital divide that collectively prevent the court system from delivering the justice that citizens are constitutionally entitled to expect. The reform path requires: a sustained programme of judicial recruitment that brings the judge-to-population ratio toward the 1:50,000 standard over a decade; the full implementation of the digital reform agenda, with specific provisions ensuring access for non-digital users; the establishment of specialized courts for commercial, environmental, and family matters with appropriately trained judges; the expansion of legal aid to universal coverage for those who cannot afford representation; and the genuine implementation of alternative dispute resolution as a complement, rather than merely a nominal alternative, to formal adjudication.

The third foundation is a legal profession educated to the highest standards and regulated with genuine seriousness. The analysis of Parts Four and Five has documented the failures of Bangladesh's legal education system, the inadequacies of the Bar Council's regulatory framework, the controversies surrounding the enrollment examination, and the absence of systematic continuing professional development. The reform path requires: the transformation of the LL.B. curriculum to develop the analytical and practical competencies that twenty-first century legal practice requires, including legal research skills, clinical legal education, professional responsibility training, and AI literacy; the development of a strong professional doctorate programme in law at a small number of research universities; the reform of the Bar Council to make it a genuine regulatory body focused on quality and accountability rather than a corporatist interest group focused on protecting the profession's market position; the introduction of mandatory continuing professional development with genuine quality standards; and the development of specialization pathways that allow lawyers to develop deep expertise in the areas of law where specialized knowledge produces the most significant improvements in the quality of service to clients.

The fourth foundation is a legal system that is genuinely responsive to international obligations. The analysis of Parts Nine, Ten, and the present Part has documented Bangladesh's international legal obligations in human rights, investment law, environmental law, and international criminal law, and the gaps between those obligations and the domestic legal framework for their implementation. The reform path requires: the enactment of a comprehensive Climate Change Act that translates the ICJ Advisory Opinion's obligations into domestic enforceable duties; the reform of Bangladesh's BIT network through the development of a model BIT and systematic renegotiation of existing treaties; the full implementation of the human rights treaty obligations undertaken through ratification of the major international instruments; the reservation withdrawal from CEDAW Articles 2 and 16 that is incompatible with the constitutional commitment to equality; and the development of a comprehensive approach to the domestic implementation of international criminal law norms, including the full alignment of the ICT's procedural framework with Rome Statute standards.

The fifth foundation is a legal culture characterized by integrity, intellectual seriousness, and genuine commitment to the rule of law. The analysis throughout this commentary has documented how legal institutions that are formally impeccable can be functionally corrupt when

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the legal culture fails to sustain the values of independence, impartiality, and principled adjudication. The reform of legal culture is the most difficult of the five foundations to achieve through institutional design, because culture is ultimately a matter of shared values and practices that emerge from the accumulated experience of a profession over time rather than from the text of statutes or the design of institutions. But legal education, bar association culture, judicial appointment processes, and the role models provided by distinguished legal practitioners and jurists can all shape legal culture in ways that reinforce or undermine the institutional framework for independence and integrity. The most powerful cultural reform intervention is probably the reform of legal education: a generation of lawyers educated in a curriculum that takes professional responsibility, comparative legal analysis, and critical jurisprudential thinking seriously will gradually transform the culture of the profession that they inhabit.

Section 111.3: The Reform Agenda and its Political Conditions

The comprehensive vision of a reformed Bangladeshi legal system is not merely an academic aspiration. It is a political project that requires political conditions for its achievement. The analysis of the political economy of institutional reform in Part Eleven identified the structural interests that resist legal system reform: the senior bar's interest in preserving the procedural features that extend litigation and generate fees; the executive branch's interest in maintaining administrative leverage over the judiciary; and the legislative tendency to use judicial appointments and special courts as instruments of partisan political advantage.

Overcoming these structural interests requires a combination of sustained popular demand, organized civil society advocacy, and political leadership that is willing to pay the short-term political costs of reform in the interests of long-term institutional improvement. The Monsoon Revolution of 2024 created an unprecedented moment of popular demand for institutional transformation. The civic energy of the young Bangladeshis who brought the Hasina government down and who have continued to engage actively with the reform agenda, insisting on genuine change rather than cosmetic adjustment, represents a political resource for reform that is more powerful than any previous moment in Bangladesh's post-independence history.

Whether that civic energy will be sustained, whether it will be channelled into the patient institutional work that comprehensive legal system reform requires, and whether the political leadership of the post-interim period will maintain the commitment to reform against the structural interests arrayed against it, are questions that cannot be answered by analysis. They are questions of political will and civic virtue that only the citizens of Bangladesh can answer through their own choices and actions.

CHAPTER ONE HUNDRED AND TWELVE: THE TRADITION OF LEGAL COMMENTARY AND THE RESPONSIBILITIES OF SCHOLARSHIP

Section 112.1: Commentary as Argument in the Jurisprudential Tradition

This commentary began, in its Preface to Part One, by situating itself in the tradition of legal commentary as argument: the tradition of Blackstone's Commentaries, Savigny's System, Coke's Institutes, and the great tradition of Islamic legal scholarship in which learned engagement with

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the legal system is understood as a form of civic responsibility rather than merely a scholarly exercise. It is appropriate, in this concluding chapter, to return to that framing and to reflect on what the exercise of legal commentary, undertaken at the scale and with the ambition of this twelve-part work, is for and what it can achieve.

Commentary in the jurisprudential tradition is not neutral description. As this commentary stated at its outset, and as the subsequent twelve Parts have consistently demonstrated, it is a form of argument: an argument for a particular way of understanding the legal system, for particular diagnoses of its deficiencies, and for particular prescriptions for its improvement. The commentary tradition works through what Dworkin would call "constructive interpretation": it takes the materials of the legal system, its texts, its history, its institutional structure, its jurisprudence, its political context, and constructs the best possible account of what those materials mean and what they demand. That construction is not a neutral exercise; it embeds choices about what to emphasize and what to elide, about which traditions to draw upon and which to treat as secondary, about which interpretive framework is most illuminating for the subject at hand.

The choices made in this commentary have been informed by several jurisprudential commitments that deserve explicit statement in conclusion. First, a commitment to the view that law is a social institution whose quality must be evaluated not by its formal elegance but by the justice or injustice that it produces in the lives of actual citizens. This is Sen's nyaya rather than niti, Dworkin's equal concern and respect rather than mere formal equality, Fuller's internal morality rather than mere external form. Second, a commitment to the view that Bangladesh's legal system must be understood in its full historical depth, including its pre-colonial, colonial, and post-colonial layers, rather than merely as an inheritance of British common law. Third, a commitment to the view that genuine reform requires intellectual honesty about the failures of the existing system, however uncomfortable that honesty may be, because reforms designed around comfortable fictions rather than uncomfortable realities will not achieve their objectives.

Section 112.2: The Role of Legal Scholarship in Reform

Legal scholarship occupies a distinctive position in the ecology of legal reform. It is not legislation, and it does not have the binding authority of law. It is not litigation, and it does not directly determine the outcomes of cases. It is not executive action, and it cannot command institutional change. But it creates the intellectual resources, the conceptual frameworks, the historical knowledge, and the critical standards that make informed reform possible. Without the scholarship on judicial independence that documented the gap between Bangladesh's constitutional promises and its institutional reality, the case for the Supreme Court Secretariat Ordinance would have been less compelling. Without the scholarship on transitional justice that analyzed the procedural deficiencies of the ICT proceedings, the reform pressures on those proceedings would have been less informed. Without the scholarship on investment treaty law that documented the risks of Bangladesh's ageing BIT network, the case for a model BIT would have been less systematically articulated.

The responsibility of legal scholarship in Bangladesh is particularly acute because the conditions in which it is produced are particularly challenging. Academic freedom in Bangladesh has been

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constrained by the same political dynamics that have constrained judicial independence: governments have preferred scholars who support official positions over scholars who challenge them, funding for legal research has been inadequate, and the careers of scholars who produce genuinely critical analysis have sometimes been damaged by the consequences of that criticism. The bravery required to do honest, critical legal scholarship in conditions where the institutions being criticized can exercise retaliatory power is real, and this commentary acknowledges it with respect.

At the same time, the tradition of scholarly independence and intellectual courage is not absent from Bangladesh's legal academy. The scholars whose work has been cited throughout this commentary, many of them based in Bangladesh and many of them having faced the institutional and political pressures of doing critical work in a system that does not always welcome criticism, are the living embodiment of that tradition. The development of legal scholarship in Bangladesh requires institutional conditions that support it, including security of tenure for academics, adequate research funding, access to comprehensive legal databases, and the freedom to publish and circulate critical analysis without fear of reprisal. These institutional conditions are themselves part of the broader reform agenda that this commentary has articulated.

Section 112.3: The Responsibilities of Legal Education

The privilege of legal education imposes responsibilities on those who hold it, and a commentary on Bangladesh's legal system that does not address those responsibilities is incomplete. The lawyers, judges, academics, and administrators who will build or fail to build the reformed legal system that Bangladesh needs are, for the most part, already in the system or being trained in the law schools and the Bar. The quality of the legal education they receive, the values and habits of mind that education instills, and the intellectual culture of the profession they join will be primary determinants of the quality of the legal system they create.

Legal education in Bangladesh, as Parts Four and Five of this commentary documented in detail, is in serious need of reform. The curriculum is too doctrinal and too oriented toward rote learning of positive law. The clinical and practical dimensions are underdeveloped. The international and comparative dimensions are treated as peripheral rather than central. The jurisprudential and philosophical foundations are frequently absent. The professional ethics component is inadequate. And the research culture that produces the scholarship needed to inform reform is insufficiently developed.

The reform of legal education is therefore not merely an institutional matter, a question of curriculum design and faculty development. It is a moral and civic matter, a question of what kind of lawyers Bangladesh's law schools will send into the profession, and what kind of legal system those lawyers will build. A legal education that produces lawyers who know the law but have never been required to question whether the law is just, who can argue any position but have never developed a principled framework for evaluating which positions are worth arguing, who have technical competence but lack the civic commitment that the responsibility of being a lawyer in a developing democracy demands, will not produce the lawyers who can build the reformed legal system that Bangladesh needs.

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The reformed legal education that this commentary envisions would produce lawyers who understand the historical roots of the system they operate in, including its colonial heritage and its post-colonial development. Who are comfortable with jurisprudential analysis and can engage seriously with questions about the relationship between law, justice, and political morality. Who have practical legal skills developed through clinical experience with real clients who genuinely need help. Who understand the international legal environment in which Bangladeshi law operates. Who are committed to professional integrity and have thought deeply about the ethical demands that the practice of law imposes. And who retain, throughout their careers, the intellectual curiosity and the civic commitment that law school at its best can cultivate and that the best of the legal profession has always exemplified.

CONCLUDING SYNTHESIS OF PART TWELVE AND THE TWELVE-PART COMMENTARY

The argument of Part Twelve has moved through the constitutional reception of international law and the dualist framework that governs Bangladesh's relationship with its international obligations; the international investment law regime and Bangladesh's complex experience as a host state, including the lessons of the Saipem judicial expropriation case, the Chevron costs award, and the emerging S. Alam ICSID claim; the historic ICJ Advisory Opinion of July 2025 and its transformative implications for domestic climate governance, domestic constitutional litigation, and Bangladesh's international legal position as a climate-vulnerable state; the artificial intelligence revolution in legal practice and its specific implications for Bangladesh's legal profession, including the language, infrastructure, data ecosystem, and professional ethics dimensions; the comprehensive vision of a reformed Bangladeshi legal system resting on five foundations of judicial independence, efficient courts, educated and accountable lawyers, international responsiveness, and professional legal culture; and the tradition of legal commentary as civic responsibility.

The argument of the twelve-part commentary as a whole converges on a conclusion that is simultaneously optimistic and demanding. It is optimistic because Bangladesh possesses extraordinary resources for legal system reform: a rich civilizational heritage of sophisticated legal thought, a constitutional framework that embeds admirable aspirations, a legal profession that contains many individuals of genuine ability and commitment, a civil society that has repeatedly demonstrated its willingness to demand better from public institutions, and a political moment, created by the Monsoon Revolution, that has opened the institutional space for reform more fully than any previous moment in post-independence history.

It is demanding because the reform that Bangladesh's legal system requires is genuinely comprehensive and genuinely difficult. It cannot be achieved by incremental adjustment of specific rules while leaving the underlying structural problems in place. It cannot be achieved by institutional design alone, without the cultural change that makes institutional structures actually function as intended. It cannot be achieved in a single political cycle, without the sustained commitment across multiple governments and multiple generations that the transformation of deep institutional arrangements requires. And it cannot be achieved without confronting directly the structural interests, in the legal profession, the executive branch, and the political system, that have consistently frustrated serious reform in the past.

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The twelve-part commentary concludes with the observation that Bangladesh's legal system is at a historical inflection point. The choice between two futures is genuinely open. One future is the continuation of the pattern this commentary has documented across twelve Parts: the formal commitment to legal reform accompanied by practical resistance to structural change, the rhetoric of judicial independence accompanied by the reality of executive influence, the aspiration to justice accompanied by the reality of denial. This future is not inevitable, but it is the default: it is what happens if the political will for genuine reform dissipates, if the reform ordinances are allowed to lapse, if the civic energy of the Monsoon Revolution is captured by the same partisan political dynamics that it briefly transcended.

The other future is the one that Bangladesh's constitutional aspirations, its historical traditions, its civic capacity, and its international obligations all point toward: a legal system that genuinely embodies the rule of law, that delivers accessible and timely justice to all its citizens, that educates its lawyers to the highest professional and intellectual standards, that maintains genuinely independent courts, that honours its international obligations including its extraordinary obligations as a frontline state of the climate crisis, and that contributes, through the quality of its jurisprudence and the integrity of its institutions, to the global project of demonstrating that constitutional democracy and the rule of law can be made real in postcolonial developing states.

Bangladesh deserves that second future. The scholars, lawyers, judges, and citizens who have produced the rich tradition of legal thought and legal advocacy documented across twelve Parts of this commentary have worked, often at personal cost, to move the legal system toward it. The task is not finished. It may never be finished, because the aspiration to justice is an ongoing project of every generation rather than an achievement that any generation can complete for all time. But the direction is clear, the resources are real, and the moment is urgent. For Bangladesh's legal system, as for so much else in the extraordinary history of this remarkable country, the future is not written.

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END OF PART TWELVE

This concludes the twelve-part commentary on the legal system of Bangladesh, the Bangladesh Bar Council, and the imperative of comprehensive legal reform. The commentary has attempted to engage honestly and rigorously with one of the most complex and consequential institutional challenges facing Bangladesh as it navigates the transition from its colonial legal inheritance to a legal system adequate to the aspirations of its constitution and the demands of the twenty-first century. The author extends profound gratitude to the scholars, practitioners, and citizens of Bangladesh whose work, courage, and civic commitment have made this analysis possible, and whose ongoing efforts represent the best hope for the transformation this commentary has sought to articulate.

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This document is far more than a textbook. It is a landmark, twelve-part treatise that serves as both a scalpel and a blueprint for the legal system of Bangladesh. Written by S M Nazmuz Sakib and published in the pivvtal year of 2026, this work is a direct response to a profound srisis. It captures a nation at a crossroads, having just emerged from the political upherxal of the 2024 Monsoon Revolution. The author argues with fierce conviction that Bangladesh's legal institutions, inherited from a colonial past and compromis ed by decades of political dysfunction, are failing its 170 million citizens. The result is a staggering backlog of millions of court cases, a legal education system that prioritizes rote memorization over analytical skill, and a Bar Council mired in allegations of corruption and political capture.

The treatise is structured as a complete intellectual and practical roadmap for reform. It begins, by excavating the deep historical and jurisprudential roots of law in the Bengal Delta, from ancient Hindu and Islamic traditions to the transformative and often damaging' impact of British colonial rule. This foundation is crucial for the author's central argument, that you cannol ftx a system you do not eruly understand, From there, the work delivers a devastating critique of the current landscape, dissecting the failures of the Bangladesh Bar Council, the absurdities of its enrollment examination, and the woefully inadoquate curriculum of the nation's law schools. The diagnosis is unsparing, but the purpose is always constructive.

The latter half of the treatise transforms into a detailed reform agenda of remarkable ambition. It proposes the creation of a national law aptitude test to democratize access to legal education, the complete abolition of the substandard two-year LLB program, and the establishment of a professional doctoral degree to cultivate a new generation of legal scholars. The vision extends to the very fabric of legal practise, calling for clinical ed education to bridge the gap between theory and justice, a specialist accreditution framework to recognize truc expertise, and the architectural overhaul of a court system buried under its own backlog. This is is not a collection of incremental tweaks but a call for a fundamental reconceprualization of what law and justice.
democratic Bangladesh.

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